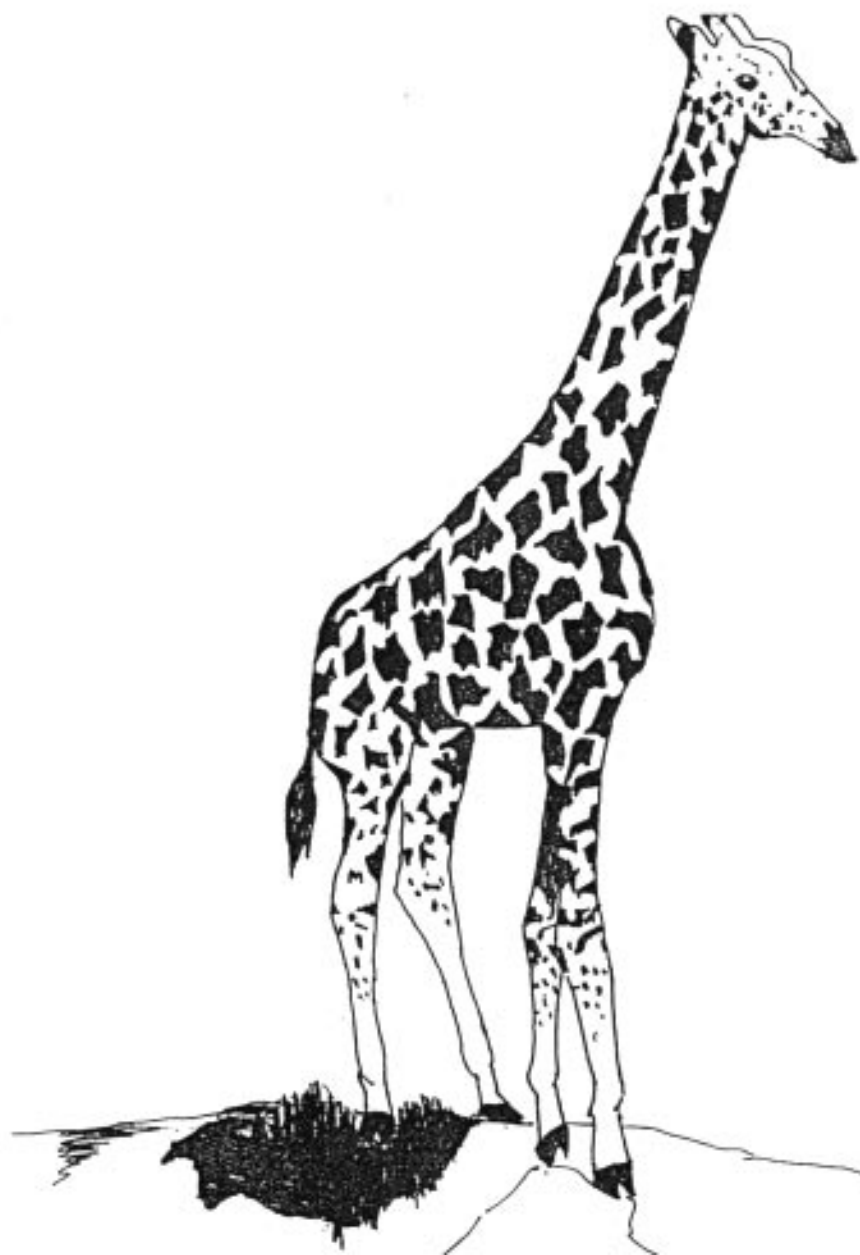


# TEXAS REGISTER

*Volume 21 Number 66 September 6, 1996*

*Pages 8553-8630*



***This month's front cover artwork:***

**Artist:** *Vuong Loi*

*8th grade*

*Haltom Middle School, Birdville ISD*

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# PROPOSED RULES

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Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

**Symbology in proposed amendments.** New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

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## TITLE 1. ADMINISTRATION

### Part V. General Services Commission

#### Chapter 113. Central Purchasing Division

##### Purchasing

##### 1 TAC §113.19

The General Services Commission proposes amendments to §113.19 concerning the catalog purchase procedure for automated information systems to change the statutory citations in §113.19(d)(n) and (o) to conform with their recodification under the Texas Government Code, and to delete §113.19(p) in order to enable contracting agencies to address catalog appeals in the manner appropriate to their circumstances.

Mr. Darrell Pierce, Director of Executive Business Administration, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Pierce also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is a simpler and more effective procedure for resolving catalog purchase protests. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to David Brown, Assistant General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than thirty days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Government Code, Title 10, Subtitle D, §2157.126 which provides the General Service Commission with the authority to promulgate rules consistent with the Code.

The following statute is affected by this rule: Texas Government Code, Title 10, Subtitle D, Chapter 2157.

*§113.19. Catalogue Purchase Procedure for Automated Information Systems.*

(a)-(c) (No change.)

(d) Upon receipt of a properly completed application and catalogue, the director for purchasing or the director's designee shall give consideration to the following standards and criteria when

deciding to designate a vendor as a qualified information systems vendor:

(1) (No change.)

(2) all factors set forth in **the Texas Government Code, §2156.006** [Texas Civil Statutes, Article 601b, §3.11(e)];

(3)-(4) (No change.)

(e)-(m) (No change.)

(n) Preference shall be given to qualified information systems vendors who sell or lease products or services pursuant to **the Texas Government Code, §2155.441** [Texas Civil Statutes, Article 601b, §3.20] .

(o) In this section an eligible purchaser is a state agency subject to the Information Resources [Management] Act (**Texas Government Code, §§2054.001 et seq.**) [(Texas Civil Statutes, Article 4413(32j)] or a local government that participates in the Cooperative Purchasing Program under Texas Local Government Code, §§271.081 et seq.

[(p) This subsection applies only to catalogue purchases which are funded in part with federal funds. A qualified information systems vendor may protest an action of an agency in making such a purchase.]

[(1) The protest must: ]

[(A) be filed, in writing, with the Office of Administrative Hearings, 300 West 15th Street, P.O. Box 13025, Austin, Texas 78711-3025, within ten working days after the occurrence of the action which is the subject of the complaint;

[(B) contain a statement of relevant facts and an explanation of the statutory or regulatory basis for the complaint;]

[(C) contain a certification that copies of the protest have been delivered to the agency making the purchase and its selected vendor; and]

[(D) be accompanied by a fee in the amount established by the Office of Administrative Hearings to cover its costs in working on the protest.]

[(2) Upon receipt of the protest and required fee, the Office of Administrative Hearings shall review the protest and issue a written decision on the matter within the time and manner established by that office. The proposal for decision shall be submitted to the General Services Commission and shall be presented for final decision in accordance with the requirements of §111.3(g) of this title (relating

to Protests/Dispute Resolution/Hearing) as though the proposal for decision constituted an appeal under §111.3.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 28, 1996.

TRD-9612574

Judy Ponder

General Counsel

General Services Commission

Earliest possible date of adoption: October 11, 1996

For further information, please call: (512) 463-3960

## TITLE 7. BANKING AND SECURITIES

### Part II. Texas Department of Banking

#### Chapter 25. Prepaid Funeral Contracts

##### Subchapter B. Regulation of Licenses

###### 7 TAC §25.25

The Banking Department of Texas (the "department") proposes an amendment to §25.25, concerning the conversion of prepaid funeral contracts from trust funded benefits to insurance funded benefits, as provided for under Texas Civil Statutes, Article 548b (the Act), §1A. Only subsection (d)(2)(K) of this section is proposed to be amended.

The proposed amendment to §25.25 provides that the permit holder must pay the purchaser at least the cancellation benefit when the contract is canceled at the purchaser's initiative after the 60-day initial conversion cancellation period. This amendment will eliminate any confusion that otherwise might result as to the amount the permit holder must pay on a prepaid funeral benefit contract canceled in accordance with subsection (d)(2)(K).

Stephanie Newberg, Director, Special Audits Division, Texas Department of Banking, has determined that, for each year of the first five years the section is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering this section.

Ms. Newberg also has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of its adoption will be clarification as to what the permit holder must pay to the purchaser when a trust-funded prepaid funeral contract is canceled at the purchaser's initiative after the 60-day initial conversion cancellation period. No economic cost will be incurred by a person required to comply with this section, and there will be no effect on small businesses.

Comments on the proposed amendment may be submitted in writing to Stephanie Newberg, Director, Special Audits Division, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The amendment is proposed pursuant to the department's rulemaking authority under the Act, §2. In addition to specific grants of rule-making authority, §2 permits the Department to promulgate rules regarding any matter "incidental to the enforcement and orderly administration" of the Act.

Texas Civil Statutes, Article 548b, is affected by this proposed amendment.

###### §25.25. *Conversion from Trust to Insurance Funded Benefits.*

(a)-(c) (No change.)

(d) Standards for approval of application.

(1) (No change.)

(2) In order for insurance funded benefits under an application for conversion to be considered to safeguard the rights and interests of the prepaid funeral contract purchasers to at least the same degree as the trust funded benefits, the insurance benefits must comply with this subsection.

(A)-(J) (No change.)

(K) The insurance policy must provide each prepaid funeral contract purchaser with a cash surrender value or cancellation benefit that is at least the same as the cancellation benefit provided for under the trust funded benefits arrangement for the duration of the prepaid funeral contract. If a prepaid funeral contract is canceled at the initiative of the purchaser after the 60-day initial conversion cancellation period, the permit-holder must remit **at least the applicable cancellation benefit** [the cash surrender value of the purchaser's annuity contract] directly to the purchaser **in accordance with the provisions of the prepaid funeral contract**. In addition, the insurance company is responsible for maintaining adequate reserves for cancellations.

(3) (No change.)

(e)-(h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 26, 1996.

TRD-9612499

Everette D. Jobe

General Counsel

Texas Department of Banking

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 475-1300

## Part IV. Texas Savings and Loan Department

### Chapter 67. Savings and Deposit Accounts

#### 7 TAC §67.17

The Finance Commission of Texas proposes an amendment to §67.17, concerning user safety at unmanned teller machines, sometimes referred to as automated teller machines or ATMs, to specifically exclude its application to night depositories.

Texas Civil Statutes, Article 342-903d, as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, governs user safety at unmanned teller machines (referred to as the ATM User Safety Act). Another statute bears a duplicate number, Article 342-903d, but concerns fees charged in connection with use of ATMs, and is not affected by §67.17 or the proposed amendment.

Section 67.17 contains definitions designed to facilitate understanding of cross-references to repealed statutes. However, the definition of ATM in §67.17, drawn from Texas Civil Statutes, Article 342-903, §2 (repealed), is ambiguous with respect to whether a night depository could be construed to be "a machine...capable of being operated solely by a customer, by which a customer may communicate to the financial institution...an instruction to deposit funds into the customer's account with the financial institution." The Finance Commission does not believe the legislature contemplated the application of the ATM User Safety Act to night depositories. As proposed to be amended, §67.17 will exclude night depositories, although a financial institution may voluntarily apply the standards of §67.17 to lighting and landscaping around its night depositories if it chooses to do so. A cross-reference within §67.17 to the definition of "customer convenience terminal" is also proposed to be deleted as unnecessary, in order to eliminate awkward phrasing and assist understanding.

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the section as proposed will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the section.

Mr. Pledger also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is clarity and simplification of complex statutory requirements. No net economic cost will result to persons required to comply with the section, and there will be no effect on small businesses.

Comments on the proposed section may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 342-1.013, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

Texas Civil Statutes, Article 852a, is affected by this proposed amendment.

*§67.17. User Safety at Unmanned Teller Machines.*

(a) Definitions. Words and terms used in this chapter that are defined in the ATM User Safety Act, §1, have the same meanings as defined in the ATM User Safety Act. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) ATM-A machine, sometimes referred to as an unmanned teller machine or remote service unit, other than a **night depository**, ~~atelephone,~~ or a customer convenience terminal, [as defined in paragraph (4) of this subsection], capable of being operated solely by a customer, by which a customer may communicate to the financial institution:

(A)-(F) (No change.)

(3)-(5) (No change.)

(b)-(i) (No change.)

Issued in Austin, Texas, on August 23, 1996.

TRD-9612482

James L. Pledger

Commissioner

Texas Savings and Loan Department

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 475-1350

◆ ◆ ◆

## Chapter 77. Loans, Investments, Savings and Deposits

### Authorized Loans and Investments

#### 7 TAC §77.91

The Finance Commission of Texas proposes an amendment to §77.91, concerning investment in and divestiture of subsidiary corporations.

Under the current §77.91, concerning investment in and divestiture of subsidiary corporations, a savings bank must obtain the prior written approval of the commissioner in order to invest in or divest itself of a subsidiary corporation. The proposed amendments would require that additionally a savings bank would be required to obtain the prior written approval of the commissioner to merge an existing subsidiary corporation with any other corporation. The standard for approval would involve a finding that the terms and conditions of the merger are in the best interest of the savings bank.

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the section as proposed will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering this section.

Mr. Pledger also has determined that, for the first five years the proposed section is in effect, no economic costs will affect regulated entities as a result of complying with the proposed section. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by this section.

In proposing the section, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state savings banks with federal savings associations, national banks and other depository institutions in this state consistent with the safety and



soundness of state savings banks and the state thrift system, and allow for economic development within this state.

Comments on the proposed section may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 342-1.013, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

Texas Civil Statutes, Article 489e, is affected by this proposed amendment.

§77.91. *Investment in and **Merger or Divestiture of Subsidiary Corporations.***

(a)-(d) (No change.)

(e) A savings bank may, with prior written approval of the commissioner, divest itself of [the stock or assets of] a subsidiary corporation **or merge or consolidate the subsidiary corporation with another company** if the commissioner finds that the terms and conditions of the **transaction** [divestiture] are in the best interests of the savings bank.

Issued in Austin, Texas, on August 23, 1996.

TRD-9612483

James L. Pledger

Commissioner

Texas Savings and Loan Department

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 475-1350



## Savings and Deposits

### 7 TAC §77.115

The Finance Commission of Texas proposes an amendment to §77.115, concerning user safety at unmanned teller machines, sometimes referred to as automated teller machines or ATMs, to specifically exclude its application to night depositories.

Texas Civil Statutes, Article 342-903d, as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, governs user safety at unmanned teller machines (referred to as the ATM User Safety Act). Another statute bears a duplicate number, Article 342-903d, but concerns fees charged in connection with use of ATMs, and is not affected by §77.115 or the proposed amendment.

Section 77.115 contains definitions designed to facilitate understanding of cross-references to repealed statutes. However, the definition of ATM in §77.115, drawn from Texas Civil Statutes, Article 342-903, §2 (repealed), is ambiguous with respect to whether a night depository could be construed to be "a machine...capable of being operated solely by a customer, by which a customer may communicate to the financial institution...an instruction to deposit funds into the customer's account with the financial institution." The Finance Commission does not believe the legislature contemplated the application

of the ATM User Safety Act to night depositories. As proposed to be amended, §77.115 will exclude night depositories, although a financial institution may voluntarily apply the standards of §77.115 to lighting and landscaping around its night depositories if it chooses to do so. A cross-reference within §77.115 to the definition of "customer convenience terminal" is also proposed to be deleted as unnecessary, in order to eliminate awkward phrasing and assist understanding.

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the section as proposed will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering this section.

Mr. Pledger also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is clarity and simplification of complex statutory requirements. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by these sections.

Comments on the proposed section may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 342-1.013, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

Texas Civil Statutes, Article 489e, is affected by this proposed amendment.

§77.115. *User Safety at Unmanned Teller Machines.*

(a) Definitions. Words and terms used in this undesignated head that are defined in the ATM User Safety Act, §1, have the same meanings as defined in the ATM User Safety Act. The following words and terms when used in this undesignated head shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) ATM-A machine, sometimes referred to as an unmanned teller machine or remote service unit, other than a **night depository**, a telephone, or a customer convenience terminal, [as defined in paragraph (4) of this subsection], capable of being operated solely by a customer, by which a customer may communicate to the financial institution:

(A)-(F) (No change.)

(3)-(5) (No change.)

(b)-(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 23, 1996.

TRD-9612484

James L. Pledger

Commissioner  
Texas Savings and Loan Department  
Earliest possible date of adoption: October 7, 1996  
For further information, please call: (512) 475-1350

## TITLE 16. ECONOMIC REGULATION

### Part III. Texas Alcoholic Beverage Commission

#### Chapter 45. Marketing Practices

##### Subchapter D. Advertising and Promotion — All Beverages

###### 16 TAC §45.113

The Texas Alcoholic Beverage Commission proposes an amendment to §45.113, concerning items and services that can be donated or sold by manufacturers or distributors to retailers or consumers. The amendment would allow manufacturers and distributors to offer prizes and gifts to consumers as part of a nationally conducted promotion. The amendment would also raise the limit on the value of novelty items given to consumers from \$1.00 to \$5.00.

Lou Bright, General Counsel for the commission, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Bright also has determined that for each year of the first five years the rule is in effect the public benefit received from this rule would be through application of similar standards of permissible conduct to manufacturers and distributors of malt beverages and other alcoholic beverage providers; through increased and broadened areas of competition between manufacturers and distributors of malt beverages; and through modernization of current spending limitations. Money expended pursuant to this rule by small businesses and persons subject to the rule would be voluntary rather than mandatory. Therefore, there is no anticipated economic costs to those entities.

The amendment is proposed under Texas Alcoholic Beverage Code, §§5.31 and §108.04.

Texas Alcoholic Beverage Code, §§102.14, 102.15, and 108.06 are affected by this amendment.

*§45.113. Relaxation of Certain Restrictions.*

(a)-(e) (No change.)

(f) Gifts.

(1)-(6) (No change.)

**(7) A manufacturer or distributor may offer prizes, premiums or gifts to a consumer if the offer is national in scope and legally offered and conducted in thirty states or more. The use of rebates or coupons redeemable by the public for the purchase of alcoholic beverages is prohibited.**

(g) (No change.)

(h) Promotion on can openers, coasters, etc.

(1)-(2) (No change.)

(3) No item authorized under this section shall exceed **five dollars** [one dollar] per unit wholesale price.

(4) (No change.)

(i)-(o) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 28, 1996.

TRD-9612562  
Doyne Bailey  
Administrator  
Texas Alcoholic Beverage Commission  
Earliest possible date of adoption: October 7, 1996  
For further information, please call: (512) 206-3204

## TITLE 22. EXAMINING BOARDS

### Part IX. Texas State Board of Medical Examiners

#### Chapter 162. Physician Registration

##### 22 TAC §166.2

The Texas State Board of Medical Examiners proposes an amendment to §166.2, concerning continuing medical education hours for renewal of a physician's license.

Tim Weitz, general counsel, has determined that for the first five-year period the section is in effect there will no fiscal implications as a result of enforcing or administering the section as proposed.

Mr. Weitz also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to allow flexibility in the reporting of continuing medical education hours; thus, allowing physicians to choose programs which will enhance their education and be of most benefit to their practice and their patients. In addition, the requirement for continuing medical education in medical ethics and/or professional responsibility is anticipated to further enhance the quality of care and service provided by physicians to the citizens of Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings,

the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Article 4495b, §3.025, is affected by this amendment.

§166.2. *Continuing Medical Education.*

(a) As a prerequisite to the annual registration of a physician's license, 24 hours of continuing medical education (CME) are required to be completed in the following categories:

(1) (No change.)

(2) **Beginning January 1, 1999, at least one of the hours of CME from formal courses as required by subsection (a)(1) of this section must be in the area of medical ethics and/or professional responsibility.**

(3) [(2)] The remaining hours may be composed of informal self-study, attendance at hospital lectures, grand rounds, or case conferences and shall be recorded in a manner that can be easily transmitted to the board upon request.

(b) A physician must report on the annual registration form the number of hours and type of continuing medical education completed during the previous year. **A licensee may carry forward CME credit hours earned prior to an annual registration report which are in excess of the 24-hour annual requirement and such excess hours may be applied to the following years' requirements. A maximum of 48 total excess credit hours may be carried forward and shall be reported according to the categories set out in subsection (a) of this section. Excess CME credit hours of any type may not be carried forward or applied to an annual report of CME more than two years beyond the date of the annual registration following the period during which the hours were earned.**

(c)-(p) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 26, 1996.

TRD-9612453

Bruce A. Levy, M.D., J.D.

Executive Director

Texas State Board of Medical Examiners

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 305-7016



## Chapter 174. Telemedicine

### 22 TAC §§174.1–174.15

The Texas State Board of Medical Examiners proposes new §174.1-174.15, relating to the practice of telemedicine.

Tim Weitz, general counsel, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections as proposed; however, it is anticipated that the cost of administering the program will be offset by the fees collected.

Mr. Weitz also has determined that for each year of the first five years the sections as proposed are in effect the public

benefit anticipated as a result of enforcing the sections will be to regulate the practice of medicine and patient care by those individuals residing outside the state of Texas who diagnose and treat Texas residents across state lines, but who do not hold a permanent license. There is currently no anticipated significant effect on small businesses. There is an anticipated cost of \$800 for the initial licensure fee and \$300 for annual registration to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new sections are proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Article 4495b, §3.06, is affected by these new sections.

§174.1. *Purpose.*

This chapter is promulgated to promote the efficient administration of the provisions of the Medical Practice Act, §3.06(i) (relating to practice in another jurisdiction involving care initiated in this state).

§174.2. *Definitions.*

The following words and terms, when used in this chapter shall have the followings meanings unless the context indicates otherwise.

Practice of medicine - A person shall be considered to be practicing medicine under any of the following circumstances:

(A) the person publicly professes to be a physician or surgeon and diagnoses, treats, or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method or to effect cures thereof; or,

(B) the person diagnoses, treats or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method and to effect cures thereof and charges therefor, directly or indirectly, money or other compensation; or,

(C) the person is physically located in another jurisdiction, other than the state of Texas, and through any medium performs an act that is part of patient care service initiated in this state that would affect the diagnosis or treatment of the patient.

Medium - Any mechanism of information transfer including electronic means.

Act that is part of patient care service - Any diagnosis, assessment, or treatment including the taking of diagnostic imaging studies as well as the preparation of pathological material for examination.

Person - An individual unless otherwise expressly made applicable to a partnership, association, or corporation.

State - Any state, territory, or insular possession of the United States and the District of Columbia. Episodic consultation - Consultation on an irregular or infrequent basis involving no more than 24 patients of a physician's diagnostic or therapeutic practice per calendar year.

Multiple consultations may be performed for one or more patients up to 24 patients per calendar year.

Informal consultation - Consultation performed outside the context of a contractual relationship and on an irregular or infrequent basis without the expectation of or exchange of direct or indirect compensation.

Patient care service initiated in this state - Any act constituting the practice of medicine as defined in this chapter in which the patient is physically located in Texas at the time of diagnosis, treatment, or testing.

*§174.3. Qualifications for Special Purpose License for Practice of Medicine Across State Lines.*

For a person to engage in the practice of medicine in Texas as defined under the Medical Practice Act, §3.06(i), and §174.2 of this chapter (relating to definitions), the person must:

- (1) be 21 years of age or older;
- (2) be actively licensed to practice medicine in another state which is recognized by the Texas State Board of Medical Examiners for purposes of licensure by endorsement, and the license for purposes of such endorsement, as well as any other license currently held to practice medicine, must be without ongoing restrictions or probation, and without previous disciplinary actions or limitations of any kind imposed by the state where the license was issued, and any other medical licenses previously held must not have been subject to such restrictions, probation, disciplinary actions or limitations of any kind imposed by the state where the license was issued;
- (3) be certified in a medical specialty pursuant to the standards of and approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists and Boards of Certification; and,
- (4) be in possession of a special purpose license issued pursuant to the terms of this chapter after submission of a completed board-approved application for a special purpose license for the practice of medicine across state lines and any requisite initial fee and subsequent annual renewal fees.

*§174.4. Limits on Special Purpose License to Practice Medicine Across State Lines.*

A special purpose license to practice medicine across state lines shall be limited exclusively to the practice of medicine as defined by §174.2 of this chapter (relating to definitions) and limited to the specialty or specialization upon which the license was granted under §174.3(a)(3) of this chapter, and the license holder shall practice medicine in a manner so as to comply with all other statutes and laws governing the practice of medicine in the state of Texas. Unless a person holds a current full license to practice medicine in this state pursuant to Chapter 163 of these rules (relating to Licensure) and the provisions of the Medical Practice Act, Subchapter C (relating to Licensure), a person holding a special purpose license shall not be authorized to physically practice medicine in the state of Texas.

*§174.5. Denial of Application for Special Purpose License to Practice Medicine Across State Lines.*

An application for a special purpose license to practice medicine across state lines may be denied based on failure to demonstrate the requisite qualifications for issuance of a special purpose license, any grounds for denial of an application for a full license, failure to submit

the required fee, and any grounds for disciplinary action of a licensee under the Medical Practice Act, §3.08 (relating to application denials and grounds for disciplinary action).

*§174.6. Revocation and Limitation of Special Purpose License.*

Upon a majority vote of the board, a person holding a special purpose license may be subject to the revocation or limitation of the license based on any grounds set forth in the Medical Practice Act, §3.08 (relating to application denials and grounds for disciplinary action) or failure to maintain the qualifications set forth in §174.3 of this chapter (relating to qualifications for a special purpose license to practice medicine across state lines) or pursuant to §174.7, 174.8, 174.9 and 174.10 of this chapter (relating to cooperation, appearances, patient medical records and informed consent, notification of address, and delegation and supervision). A person holding a special purpose license shall be subject to the jurisdiction of the board for purposes of revocation or limitation of the special purpose license. Limitations which may be imposed on a special purpose license may include any action authorized under the Medical Practice Act, §4.12 (relating to methods of discipline).

*§174.7. Cooperation.*

A special purpose license holder shall cooperate in the investigation of any possible grounds for revocation or limitation of the license by timely compliance with all subpoenas issued by the board for evidence or information, and shall provide within 21 days of receipt of a written request from a board investigator or attorney, clear and legible copies of requested documents, including medical records, which may be related to possible grounds for revocation or limitation of a special purpose license. Failure to timely comply with a board subpoena or provide clear and legible copies of requested records shall be grounds for revocation or limitation of a special purpose license pursuant to the provisions of §174.6 of this chapter (relating to revocation and limitation of special purpose license).

*§174.8. Appearances.*

To address concerns regarding possible grounds for revocation or limitation of a special purpose license, a special purpose license holder shall appear at the offices of the board upon written request sent by certified mail-return receipt requested to the license holder's last known address on file with the board and mailed at least 30 days prior to the scheduled appearance date. The appearance shall be before a panel or committee of the board for purposes of answering questions and providing information related to possible grounds for revocation or limitation of a special purpose license. Failure to appear as requested shall be grounds for revocation or limitation of a special purpose license pursuant to the provisions of §174.6 of this chapter (relating to revocation and limitation of special purpose license).

*§174.9. Patient Medical Records.*

A special purpose license holder shall maintain, safeguard, and release patient medical records of Texas patients in a manner consistent with the laws of the state of Texas. Failure to maintain, safeguard, or release patient medical records of Texas patients as required by the laws of the state of Texas shall be grounds for revocation or limitation of a special purpose license pursuant to the provisions of §174.6 of this chapter (relating to revocation and limitation of special purpose license).

*§174.10. Informed Consent.*

Written informed consent shall be obtained from any patient who is the subject of out-of-state consultation by electronic means other

than telephone or telefacsimile. Such informed consent shall include an explanation by the consulting physician or, in the absence of a consulting physician, by the physician consulted. The written informed consent shall include an acknowledgment by the patient that confidentiality of medical information may be compromised by electronic transmission for purposes of consultation. Failure to obtain written informed consent for consultation by electronic means other than telephone or telefacsimile shall be grounds for revocation or limitation of a special purpose license pursuant to §174.6 of this chapter (relating to revocation and limitation of special purpose license) and, if the person is licensed by the board, grounds for disciplinary action pursuant to the Medical Practice Act, §§3.08, 4.12, and 4.125 (relating to grounds for disciplinary action, authorized disciplinary action, and administrative penalties).

**§174.11. Address Changes.**

Special purpose license holders shall maintain a current practice and mailing address on file with the board and shall notify the board within ten days of any change in address. The practice and mailing addresses may be the same. Failure to maintain a current practice and mailing address on file with the board or to timely notify the board of an address change, shall be grounds for revocation or limitation of a special purpose license pursuant to the provisions of §174.6 of this chapter (relating to revocation and limitation of special purpose license).

**§174.12. Delegation and Supervision.**

Tasks and activities related to consultation across state lines may be delegated by consulting physicians and consultant physicians to those persons qualified by licensing, training, or experience so long as the exercise of independent medical judgment is not required to be exercised by the individual to whom the task or activity is delegated. A physician delegating such tasks or activities shall ensure that the individual to whom delegation is made is qualified by licensure, training, or experience. A physician delegating such tasks or activities shall ensure that the person to whom delegation is made is adequately supervised. Improper delegation and failure to adequately supervise shall be grounds for revocation or limitation of a special purpose license pursuant to the provisions of §174.6 of this chapter (relating to revocation and limitation of special purpose license) and grounds for disciplinary action against licensees pursuant to the provisions of the Medical Practice Act, §3.08 (relating to grounds for disciplinary action).

**§174.13. Exemptions.**

The following activities shall be exempt from the requirements of a special purpose license and this chapter:

- (1) episodic consultation by a medical specialist located in another jurisdiction who provides such consultation services on request to a person licensed in this state who practices in the same medical specialty;
- (2) consultation services provided by a physician located in another jurisdiction to a medical school as defined in the Education Code, §61.501;
- (3) consultation services provided by a physician located in another jurisdiction to an institution defined in either the Education Code, Subchapter C, Chapter 73, or Subchapter K, Chapter 74;
- (4) informal consultation performed outside the context of a contractual relationship and on an irregular or infrequent

basis without the expectation or exchange of direct or indirect compensation; and,

- (5) furnishing of medical assistance in case of an emergency or disaster if no charge is made for the medical assistance.

**§174.14. Temporary Suspension of Special Purpose License.**

A special purpose license may be temporarily suspended pursuant to the provisions of the Medical Practice Act, §4.13 and board rule 187.40 (relating to temporary suspensions of licenses).

**§174.15. Fees and Failure to Submit Fees.**

The fee for a special purpose license and the fee for annual renewal of a special purpose license shall be as follows.

- (1) Initial Fee. In addition to all other requirements for obtaining a special purpose license under this chapter, an applicant shall submit a fee of \$800.00 in the form of a check or money order payable to the Texas State Board of Medical Examiners.

- (2) Renewal Fee and Renewal Form. In addition to all other requirements of this chapter, to maintain a special purpose license, a special purpose license holder shall submit an annual renewal fee of \$300.00 in the form of a check or money order payable to the Texas State Board of Medical Examiners, along with a completed renewal form provided by the Texas State Board of Medical Examiners.

- (3) Failure to Submit Fees. Failure of an applicant for a special purpose license to submit the required initial fee shall be grounds for the board to stop processing the application and to deny the application. Failure of a special purpose license holder to submit the required renewal fee shall be grounds for the board to immediately cancel the special purpose license. After cancellation of a special purpose license for failure to submit the required renewal fee, the special purpose license may not be renewed, but another license may be issued based on submission of a new application and compliance with §174.3 of this chapter (relating to qualifications for a special purpose license).

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Bruce A. Levy, M.D., J.D.

Executive Director

Texas State Board of Medical Examiners

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For further information, please call: (512) 305-7016



## Chapter 183. Acupuncture

### 22 TAC §183.21

The Texas State Board of Medical Examiners proposes new §183.21, concerning advertising by licensed acupuncturists.

Tim Weitz, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications as a result of enforcing or administering the section as proposed.

Mr. Weitz also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that licensed acupuncturists refrain from advertising in a manner

that is misleading or deceptive. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new section is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Article 4495b, Subchapter F, is affected by this new section.

*§183.21. Acupuncture Advertising.*

(a) License number on print advertising. Except as provided for in subsection (b) of this section, all written advertising communicated by any means or medium which is authorized, procured, promulgated, or used by any acupuncturist shall reflect the current Texas acupuncture license number of the acupuncturist who authorized, procured, promulgated, or used the advertisement and/or is the subject of the advertising. In the event that more than one acupuncturist authorizes, procures, promulgates, uses, and/or is the subject of the advertising, each such acupuncturist shall ensure that any such print medium reflects the current Texas acupuncture license number of the acupuncturist.

(b) Exceptions. The following forms of advertising shall be exempt from the provisions of subsection (a) of this section:

- (1) business cards;
- (2) office, clinic, or facility signs at the office, clinic, or facility location;
- (3) single line telephone listings; and,
- (4) billboard advertising.

(c) Misleading or deceptive advertising. Acupuncturists shall not authorize or use false, misleading, or deceptive advertising, and, in addition, shall not engage in any of the following:

(1) hold themselves out as a physician or surgeon or any combination or derivative of those terms unless also licensed by the medical board as a physician or surgeon as defined under the Medical Practice Act, §1.03 (relating to Definitions);

(2) use the terms "board certified" unless the advertising also discloses the complete name of the board which conferred the referenced certification; or,

(3) use the terms "board certified" or any similar words or phrases calculated to convey the same meaning if the advertised board certification has expired and has not been renewed at the time the advertising in question was published, broadcast, or otherwise promulgated.

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Executive Director

Texas State Board of Medical Examiners

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For further information, please call: (512) 305-7016



## Chapter 185. Physician Assistants

### 22 TAC §§185.4, 185.9, 185.20, 185.23, 185.25, 185.27

The Texas State Board of Medical Examiners proposes amendments to §§185.4, 185.9, 185.20, 185.23, 185.25, and 185.27, related to the practice of physician assistants. The proposed amendments are related to issues such as licensure, discipline, the board's new address, informal settlement conferences and show compliance proceedings, and impaired physician assistants.

Tim Weitz, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications as a result of enforcing or administering the sections as proposed.

Mr. Weitz also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify the board's new address on the professional liability claims report, clarify board member participation in informal settlement conferences and show compliance proceedings, and further define disciplinary guidelines and self-reporting of intemperate use of drugs or alcohol or physical or mental conditions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act, and the Physician Assistant Licensing Act, Texas Civil Statutes, Article 4495b-1, §23 which authorizes the Texas State Board of Physician Assistant Examiners to adopt reasonable and necessary rules for the performance of its duties.

Article 4495b-1, §18 and §19 are affected by these amendments.

*§185.4. Licensure.*

(a)-(b) (No change.)

(c) **The executive director shall review each application for licensure and shall recommend to the board all applicants eligible for licensure. The executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the executive director may request review of such recommendation by a committee of the board within 20 days of receipt of such notice, and the executive director may refer any application to said committee for a recommendation concerning eligibility.**

If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons therefor, shall be submitted to the board unless the applicant requests a hearing within 20 days of receipt of notice of the committee's determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act and its subsequent amendments and the rules of the State Office of Administrative Hearings and the board. The committee may refer any application for determination of eligibility to the full board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant for licensure. A physician assistant whose application for licensure is denied by the board shall receive a written statement containing the reasons for the board's action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Open Records Law. The board may disclose such reports to appropriate licensing authorities in other states.

*§185.9. Inactive License.*

(a)-(b) (No change.)

(c) A physician assistant may return to active status by applying to the board, paying the license renewal fee, and complying with the requirements for license renewal under the Physician Assistant Licensing Act[, §10].

*§185.20. Discipline of Physician Assistants.*

(a) The board, upon finding a physician assistant has committed any offense described in §185.19 of this title (relating to Grounds for Denial of Licensure and for Disciplinary Action), may:

(1)-(8) (No change.)

**(b) Disciplinary Guidelines.**

**(1) Purpose.** This subsection will:

**(A)** provide guidance and a framework of analysis for administrative law judges in the making of recommendations in contested licensure and disciplinary matters;

**(B)** promote consistency in the exercise of sound discretion by board members in the imposition of sanctions in disciplinary matters; and,

**(C)** provide guidance for board members for the resolution of potentially contested matters.

**(2) Limitations.** This subsection shall be construed and applied so as to preserve board member discretion in the imposition of sanctions and remedial measures pursuant to the Physician Assistant Licensing Act, sections 18 (related to Disciplinary Proceedings) and 19 (related to Additional Disciplinary Authority). This subsection shall be further construed and applied so as to be consistent with the Physician Assistant Licensing Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

**(3) Aggravation.** The following may be considered as aggravating factors so as to merit more severe or more restrictive action by the board.

**(A)** patient harm and the severity of patient harm;

**(B)** economic harm to any individual or entity and the severity of such harm;

**(C)** environmental harm and the severity of such harm;

**(D)** increased potential for harm to the public;

**(E)** attempted concealment of misconduct;

**(F)** premeditated misconduct;

**(G)** intentional misconduct;

**(H)** motive;

**(I)** prior misconduct of a similar or related nature;

**(J)** disciplinary history;

**(K)** prior written warnings or written admonishments from any governmental agency or official regarding statutes or regulations pertaining to the misconduct;

**(L)** violation of a board order;

**(M)** failure to implement remedial measures to correct or mitigate harm from the misconduct;

**(N)** lack of rehabilitative potential or likelihood for future misconduct of a similar nature; and,

**(O)** relevant circumstances increasing the seriousness of the misconduct.

**(4) Extenuation and Mitigation.** The following may be considered as extenuating and mitigating factors so as to merit less severe or less restrictive action by the board.

**(A)** absence of patient harm;

**(B)** absence of economic harm;

**(C)** absence of environmental harm;

**(D)** absence of potential harm to the public;

**(E)** self-reported and voluntary admissions of misconduct;

**(F)** absence of premeditation to commit misconduct;

**(G)** absence of intent to commit misconduct;

**(H)** motive;

**(I)** absence of prior misconduct of a similar or related nature;

**(J)** absence of a disciplinary history;

**(K)** implementation of remedial measures to correct or mitigate harm from the misconduct;

**(L)** rehabilitative potential;

**(M)** prior community service and present value to the community;

**(N)** relevant circumstances reducing the seriousness of the misconduct; and,

**(O)** relevant circumstances lessening responsibility for the misconduct.

§185.23. *Investigations.*

- (a)-(b) (No change.)
- (c) Impaired Physician Assistants.
  - (1)-(2) (No change.)
  - (3) Rehabilitation Order.

(A) The board, through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on any licensee or, as a prerequisite for issuing a license, on any licensure applicant based on one or more of the following:

(i) intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician. [;] **The determination as to whether intemperate use of drugs or alcohol was a direct result of habituation or addiction caused by medical care or treatment by another physician shall be made by the board based on medical records and/or credible testimony from health-care practitioners. In the event that medical records and credible testimony are unavailable or are inconclusive regarding whether intemperate use of alcohol or drugs was a direct result of habituation or addiction caused by medical care or treatment by another physician, the board shall exercise sound discretion in making a determination based on available evidence and may conclude that intemperate use of alcohol or drugs was not caused by such medical care or treatment;**

(ii) self-reported intemperate use of drugs or alcohol during the last five years immediately preceding the report which could adversely affect the reporter's ability to safely practice as a physician assistant, but only if the reporting individual has not previously been the subject of a substance abuse related order of the board. [;] **A self-report of intemperate use of drugs or alcohol shall at a minimum contain the approximate dates of intemperate use, the extent of intemperate use, the substance or substances used, the method or methods of ingestion, and any history of substance abuse treatment to include approximate dates of treatment and the specific locations where treatment was received. Self-reports of intemperate use of drugs or alcohol by licensees or licensure applicants shall be made through one or more of the following methods prior to the board opening an investigation in regard to the individual for alleged intemperate use of drugs or alcohol:**

**(I) a hand-written or typed statement submitted to the board or board staff by mail, messenger, facsimile transmission, or hand-delivery which has been signed by the licensee or licensure applicant and may include responses provided as part of an application for a license or a writing submitted for purposes of licensure renewal; or**

**(II) a hand-written or typed statement submitted to the board or board staff by mail, messenger, facsimile transmission, or hand-delivery which has been signed by an authorized agent of the licensee or licensure applicant with prior approval of the licensee or licensure applicant;**

(iii)-(iv) (No change.)

(B) The determination as to whether a mental or physical condition predated and caused intemperate use of alcohol or drugs shall be made by the board based on medical records and/or credible testimony from health-care practitioners. In the event that medical records and credible testimony are

**unavailable or are inconclusive regarding whether a mental or physical condition predated and caused intemperate use of alcohol or drugs, the board shall exercise sound discretion in making a determination based on available evidence and may conclude that intemperate use of alcohol or drugs was not caused by a preexisting mental or physical condition.**

(C)(B)] A rehabilitation order entered pursuant to this section shall be a nondisciplinary private order and shall contain findings of fact and conclusions of law. A rehabilitation order, if entered by agreement, shall be an agreed disposition or settlement agreement for purposes of civil litigation and shall be exempt from the open records law, Chapter 552, Government Code. **Confidentiality may be preserved through one or more of the following:**

(i) **confidential informal settlement conferences/show compliance proceedings;**

(ii) **confidential modification and termination requests and proceedings;**

(iii) **executive sessions by the board and board committees; and/or,**

(iv) **redaction of identifying information when such orders are considered in open session.**

(D)(C)] A rehabilitation order entered pursuant to this section may impose a revocation, cancellation, suspension, period of probation or restriction, or any other terms and conditions authorized under this Act or as otherwise agreed to by the board and the individual subject to the order.

(E)(D)] Violation of a rehabilitation order entered pursuant to this section may result in disciplinary action under the provisions of this Act for contested matters or pursuant to the terms of the agreed order. A violation of a rehabilitation order may be grounds for disciplinary action based on unprofessional or dishonorable conduct or on any of the provisions of this Act which may apply to the misconduct which resulted in violation of the rehabilitation order.

(F)(E)] The rehabilitation orders entered pursuant to this section shall be kept in a confidential file which shall be subject to an independent audit by state auditors or private auditors contracted with by the board to perform such an audit. Audits may be performed at any time at the direction of the board but shall be performed at least once every three years. The audit results shall be reported in a manner that maintains the confidentiality of all licensees who are subject to rehabilitation orders and shall be a public record. The audit shall be for the purposes of ensuring that only qualified licensees are subject to rehabilitation orders.

(d)-(e) (No change.)

(f) Reporting Professional Liability Claims.

(1)-(8) (No change.)

(9) Reporting Form. The reporting form shall be as follows:

Figure 1: 22 TAC §185.23(f)(9)

(10) (No change.)

(g)-(i) (No change.)

§185.25. *Procedure - Prehearing.*



(a)-(b) (No change.)

(c) Show Compliance Proceeding. Pursuant to the Administrative Procedure Act, §2001.054, the following rules shall apply to show compliance proceedings:

(1)-(4) (No change.)

(5) **Two members of the board, consisting of at least one physician assistant or one physician shall conduct the show compliance proceeding as the board's representatives. The representative who has seniority on the board shall chair the proceeding.**[Three members of the board, consisting of a physician assistant, a physician, and a public member shall conduct the show compliance proceeding as the board's representatives. The representative who has seniority on the board shall chair the proceeding.]

(6)-(10) (No change.)

(11) [To the extent possible, board members are required to serve as representatives at show compliance proceedings an equal number of times during a calendar year.] In the event a board member has a complaint regarding the frequency or infrequency of service as a representative, the complaint may be routed in writing to the Director of Hearings for the medical board who shall then bring the complaint to the attention of the presiding officer of the board for submission to the board for a resolution by a majority vote.

(12)-(16) (No change.)

(d)-(g) (No change.)

(h) Informal Disposition. Pursuant to the Administrative Procedure Act, §2001.056, the following rules shall apply to informal dispositions of any complaint or matter relating to the Physician Assistant Licensing Act or of any contested case.

(1)-(4) (No change.)

(5) **Two members of the board, consisting of at least one physician assistant or one physician, shall conduct the informal settlement conference as the board's representatives. The representative who has seniority on the board shall chair the conference.**[Three members of the board, a physician assistant, a physician, and a public member, shall conduct the informal settlement conference as the board's representatives. The representative who has seniority on the board shall chair the conference.]

(6)-(10) (No change.)

(11) [To the extent possible, board members are required to serve as representatives at informal settlement conferences an equal number of times during a calendar year.] In the event a board member has a complaint regarding the frequency or infrequency of service as a representative, the complaint may be routed in writing to the Director of Hearings for the medical board who shall then bring the complaint to the attention of the presiding officer of the board for submission to the board for a resolution by a majority vote.

(12)-(19) (No change.)

§185.27. *Procedure - Posthearing.*

(a)-(g) (No change.)

**(h) Modification/Termination of Agreed Orders and Disciplinary Orders.**

**(1) Unless the board order specifies that the order shall or will be modified or terminated upon the fulfillment of certain**

**conditions or the occurrence of certain events, the decision to modify or terminate a board order shall be a matter for the exercise of sound discretion by the board.**

**(2) Modification or termination requests shall not be contested matters but instead shall be matters to be ruled upon through the exercise of sound discretion by the board.**

**(3) If a board order sets out certain conditions or events for granting modification or termination of an order, the petitioner shall have the burden of establishing that such conditions or events have taken place or been met.**

**(4) If by the terms of the order no specific conditions or events trigger the requirement that the petition be granted, the following factors may be considered for purposes of analyzing the merits of the petition and exercising sound discretion:**

**(A) has there been a significant change in circumstances which indicates that it is in the best interest of the public and the physician assistant to modify or terminate the order;**

**(B) has there been an unanticipated unique or undue hardship on the physician assistant as a result of the board order which goes beyond the natural adverse ramifications of the disciplinary action (i.e. impossibility of requirement, geographical problems);**

**(C) has the physician assistant engaged in special activities which are particularly commendable or so meritorious as to make modification or termination appropriate;**

**(D) has the physician assistant fulfilled the requirements of his order in a timely manner and cooperated with the board and board staff during the period of probation or restriction; and**

**(E) has the physician assistant served a significant portion of the required period of restriction of probation.**

**(5) Unless the terms of the board order specify otherwise, petitions for modification or termination shall be in writing and filed with the Director of Hearings for the board.**

**(6) Modification or termination requests may be made only once a year unless a board order specifies; however, upon an assertion in writing under oath by a petitioner indicating that a circumstance exists such as described in paragraph (4)(A) of this section, a petitioner may seek permission to petition for early modification of terms which cause unanticipated unique or undue hardship or are otherwise impossible to meet as set forth in the order.**

**(7) For purposes of administrative convenience, modification or termination requests may be heard by the full board or by representatives of the board. In the event such a request is heard by board representatives, the representatives of the board shall not be authorized to bind the board, but shall only make recommendations to the board regarding an appropriate disposition. The recommendation of such representatives shall be submitted to the full board for adoption or rejection in the form of an order drafted by board staff.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 26, 1996.

TRD-9612456

Bruce A. Levy, M.D., J.D.

Executive Director

Texas State Board of Medical Examiners

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 305-7016



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **Part XIII. Texas Commission on Fire Protection**

#### **Chapter 423. Fire Suppression**

#### **Subchapter A. Minimum Standards for Structure Fire Protection Personnel Certification**

##### **37 TAC §423.7**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Commission on Fire Protection proposes the repeal of §423.7, concerning minimum standards for master structure fire protection personnel certification. The new section that replaces the repealed section increases the years of experience for the master level of certification from nine years to twelve. It also adds language to accept an associate degree as well as the current requirement of 60 college semester hours. In addition, the college semester hours in fire science subjects have been increased from fifteen hours to eighteen. The proposed repeal has an effective date of January 1, 1997.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the new section that replaces the repealed section is in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the section that replaces the repealed section is in effect the public benefit anticipated as a result of enforcing the section will be that the alternative of an associate degree encourages fire protection personnel to pursue higher education which will enable them to better serve and protect their communities. There are no additional costs of compliance for small or large businesses and for persons required to comply with the changes. There is no local employment impact resulting from the change. The commission has determined that the proposed repeal relating to minimum standards for structure fire protection personnel will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286.

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed repeal.

*§423.7. Minimum Standards for Master Structure Fire Protection Personnel Certification.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 23, 1996.

TRD-9612319

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 918-7189



The Texas Commission on Fire Protection proposes new §423.7, concerning minimum standards for master structure fire protection personnel certification. The new section increases the years of experience for the master level of certification from nine years to twelve. It also adds language to accept an associate degree as well as the current requirement of 60 college semester hours. In addition, the college semester hours in fire science subjects have been increased from fifteen hours to eighteen. The proposed new section has an effective date of January 1, 1997.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the new section is in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the alternative of an associate degree encourages fire protection personnel to pursue higher education which will enable them to better serve and protect their communities. There are no additional costs of compliance for small or large businesses and for persons required to comply with the changes. There is no local employment impact resulting from the change. The commission has determined that the proposed new section relating to minimum standards for structure fire protection personnel will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The new section is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed new section.

*§423.7. Minimum Standards for Master Structure Fire Protection Personnel Certification.*

(a) Applicants for Master Structure Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Structure Fire Protection Personnel Certification as defined in §423.5 of this title (relating to Minimum Standards for Advanced Structure Fire Protection Personnel Certification); and

(2) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Structure Fire Protection Personnel Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 21, 1996.

TRD-9612320

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 916-7189



## Subchapter B. Minimum Standards for Aircraft Crash and Rescue Fire Protection Personnel Certification

### 37 TAC §423.209

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Commission on Fire Protection proposes the repeal of §423.209, concerning minimum standards for master aircraft rescue and fire protection personnel. The new section that replaces the repealed section increases the years of experience for the master level of certification from nine years to twelve. It

also adds language to accept an associate degree as well as the current requirement of 60 college semester hours. In addition, the college semester hours in fire science subjects have been increased from fifteen hours to eighteen. The proposed repeal has an effective date of January 1, 1997.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the new section that replaces the repealed section is in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the section that replaces the repealed section is in effect the public benefit anticipated as a result of enforcing the section will be that the alternative of an associate degree encourages fire protection personnel to pursue higher education which will enable them to better serve and protect their communities. There are no additional costs of compliance for small or large businesses and for persons required to comply with the changes. There is no local employment impact resulting from the change. The commission has determined that the proposed repeal relating to minimum standards for aircraft rescue and fire protection personnel will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed repeal.

*§423.209. Minimum Standards for Master Aircraft Rescue and Fire Protection Personnel Certification.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 23, 1996.

TRD-9612321

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 918-7189



The Texas Commission on Fire Protection proposes new §423.209, concerning minimum standards for master aircraft rescue and fire protection personnel. The new section increases the years of experience for the master level of certi-

fication from nine years to twelve. It also adds language to accept an associate degree as well as the current requirement of 60 college semester hours. In addition, the college semester hours in fire science subjects have been increased from fifteen hours to eighteen. The proposed new section has an effective date of January 1, 1997.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the new section is in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the alternative of an associate degree encourages fire protection personnel to pursue higher education which will enable them to better serve and protect their communities. There are no additional costs of compliance for small or large businesses and for persons required to comply with the changes. There is no local employment impact resulting from the change. The commission has determined that the proposed new section relating to minimum standards for aircraft rescue and fire protection personnel will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The new section is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed new section.

*§423.209. Minimum Standards for Master Aircraft Rescue and Fire Protection Personnel Certification.*

(a) Applicants for Master Aircraft Rescue and Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Aircraft Rescue and Fire Protection Personnel Certification as defined in §423.207 of this title (relating to Minimum Standards for Advanced Aircraft Rescue and Fire Protection Personnel Certification); and

(2) acquire a minimum of twelve hours of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Aircraft Rescue and Fire Protection Personnel Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 21, 1996.

TRD-9612322

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 916-7189



## Subchapter C. Minimum Standards for Marine Fire Protection Personnel

### 37 TAC §423.309

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Commission on Fire Protection proposes the repeal of §423.309, concerning minimum standards for master marine fire protection personnel certification. The new section that replaces the repealed section increases the years of experience for the master level of certification from nine years to twelve. It also adds language to accept an associate degree as well as the current requirement of 60 college semester hours. In addition, the college semester hours in fire science subjects have been increased from fifteen hours to eighteen. The proposed repeal has an effective date of January 1, 1997.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the new section that replaces the repealed section is in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the section that replaces the repealed section is in effect the public benefit anticipated as a result of enforcing the section will be that the alternative of an associate degree encourages fire protection personnel to pursue higher education which will enable them to better serve and protect their communities. There are no additional costs of compliance for small or large businesses and for persons required to comply with the changes. There is no local employment impact resulting from the change. The commission has determined that the proposed repeal relating to minimum standards for marine fire protection personnel will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish

minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed repeal.

§423.309. *Minimum Standards for Master Marine Fire Protection Personnel Certification.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 23, 1996.

TRD-9612323

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 918-7189



The Texas Commission on Fire Protection proposes new §423.309, concerning minimum standards for master marine fire protection personnel certification. The new section increases the years of experience for the master level of certification from nine years to twelve. It also adds language to accept an associate degree as well as the current requirement of 60 college semester hours. In addition, the college semester hours in fire science subjects have been increased from fifteen hours to eighteen. The proposed new section has an effective date of January 1, 1997.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the new section is in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the alternative of an associate degree encourages fire protection personnel to pursue higher education which will enable them to better serve and protect their communities. There are no additional costs of compliance for small or large businesses and for persons required to comply with the changes. There is no local employment impact resulting from the change. The commission has determined that the proposed new section relating to minimum standards for marine fire protection personnel will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The new section is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish min-

imum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed new section.

§423.309. *Minimum Standards for Master Marine Fire Protection Personnel Certification.*

(a) Applicants for Master Marine Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Marine Fire Protection Personnel Certification as defined in §423.307 of this title (relating to Minimum Standards for Advanced Marine Fire Protection Personnel Certification); and

(2) acquire a minimum of twelve hours of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Marine Fire Protection Personnel Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 21, 1996.

TRD-9612324

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 916-7189



## Chapter 429. Minimum Standards for Fire Inspectors

### 37 TAC §429.9

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Commission on Fire Protection proposes the repeal of §429.9, concerning minimum standards for master fire inspector certification. The new section that replaces the repealed section increases the years of experience for the master level of certification from nine years to twelve. It also adds language to accept an associate degree as well as the current requirement of 60 college semester hours. In addition, the college semester hours in fire science subjects have been increased from fifteen hours to eighteen. The proposed repeal has an effective date of January 1, 1997.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the new section that replaces the repealed section is in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the section that replaces the repealed section is in effect the public benefit anticipated as a result of enforcing the section will be that the alternative of an associate degree encourages fire protection personnel to pursue higher education which will enable them to better serve and protect their communities. There are no additional costs of compliance for small or large businesses and for persons required to comply with the changes. There is no local employment impact resulting from the change. The commission has determined that the proposed repeal relating to minimum standards for fire inspector will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed repeal.

*§429.9. Minimum Standards for Master Fire Inspector Certification.* This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 23, 1996.

TRD-9612325

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 918-7189

The Texas Commission on Fire Protection proposes new §429.9, concerning minimum standards for master fire inspector certification. The new section increases the years of experience for the master level of certification from nine years to twelve. It also adds language to accept an associate degree as well as the current requirement of 60 college semester hours. In addition, the college semester hours in fire science subjects have been increased from fifteen hours to eighteen. The proposed new section has an effective date of January 1, 1997.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the new section is in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the alternative of an associate degree encourages fire protection personnel to pursue higher education which will enable them to better

serve and protect their communities. There are no additional costs of compliance for small or large businesses and for persons required to comply with the changes. There is no local employment impact resulting from the change. The commission has determined that the proposed new section relating to minimum standards for fire inspector will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The new section is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed new section.

*§429.9. Minimum Standards for Master Fire Inspector Certification.*

(a) Applicants for Master Fire Inspector Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Fire Inspector Certification as defined in §429.7 of this title (relating to Minimum Standards for Advanced Fire Inspector Certification); and

(2) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Fire Inspector Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 21, 1996.

TRD-9612326

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 916-7189

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## Chapter 431. Minimum Standards for Fire and Arson Investigator

### 37 TAC §431.9

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register*

office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Fire Protection proposes the repeal of §431.9, concerning minimum standards for master fire and arson investigator certification. The new section that replaces the repealed section increases the years of experience for the master level of certification from nine years to twelve. It also adds language to accept an associate degree as well as the current requirement of 60 college semester hours. In addition, the college semester hours in fire science subjects have been increased from fifteen hours to eighteen. The proposed repeal has an effective date of January 1, 1997.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the new section that replaces the repealed section is in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the section that replaces the repealed section is in effect the public benefit anticipated as a result of enforcing the section will be that the alternative of an associate degree encourages fire protection personnel to pursue higher education which will enable them to better serve and protect their communities. There are no additional costs of compliance for small or large businesses and for persons required to comply with the changes. There is no local employment impact resulting from the change. The commission has determined that the proposed repeal relating to minimum standards for fire and arson investigator will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed repeal. 431.9. Minimum Standards for Master Fire and Arson Investigator Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 23, 1996.

TRD-9612327

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 918-7189

◆ ◆ ◆  
The Texas Commission on Fire Protection proposes new §431.9, concerning minimum standards for master fire and arson investigator certification. The new section increases the years of experience for the master level of certification from nine years to twelve. It also adds language to accept an associate degree as well as the current requirement of 60 college semester hours. In addition, the college semester hours in fire science subjects have been increased from fifteen hours to eighteen. The proposed new section has an effective date of January 1, 1997.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the new section is in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the alternative of an associate degree encourages fire protection personnel to pursue higher education which will enable them to better serve and protect their communities. There are no additional costs of compliance for small or large businesses and for persons required to comply with the changes. There is no local employment impact resulting from the change. The commission has determined that the proposed new section relating to minimum standards for fire and arson investigator will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The new section is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed new section.

*§431.9. Minimum Standards for Master Fire and Arson Investigator Certification.*

(a) Applicants for Master Fire and Arson Investigator Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Fire and Arson Investigator Certification as defined in §431.7 of this title (relating to Minimum Standards for Advanced Fire and Arson Investigator Certification); and

(2) acquire a minimum of twelve years of fire protection experience, 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Fire and Arson Investigator Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 21, 1996.

TRD-9612328

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 916-7189

## Chapter 439. Examinations for Certification

### 37 TAC §§439.5, 439.7, 439.9, 439.11, 439.13, 439.15, 439.17

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Commission on Fire Protection proposes the repeals to §§439.5, 439.7, 439.9, 439.11, 439.13, 439.15, and 439.17, concerning examinations for certification. The repealed language is being replaced by new language that deals with the same subject matter. The repeal has an effective date of January 1, 1997.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the new sections that replace the repealed sections are in effect there will be no fiscal implications for the state. Local governments that operate approved training facilities for structure fire protection personnel will experience an increase in administrative costs of approximately \$15.00 per student associated with evaluating performance skills objectives in academies.

Mr. Calagna also has determined that for each of the first five years the sections that replace the repealed sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the new program will promote uniform performance skills testing and training and ensures that 100% of the performance skills will be tested over time. If a training academy is operated for a local government by a private business the cost of compliance for large and small business will be the same as estimated for local governments: approximately \$15.00 per student. The cost to individuals required to comply with the new sections may increase by approximately \$15.00 per student if academies pass on the administrative costs to students. There is no local employment impact resulting from the new section. The commission has determined that the proposed amendment relating to examinations for certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The repeals are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.032(b), concerning basic certification examinations.

Texas Government Code, §419.032(b) is affected by the proposed repeals.

§439.5. *Definitions.*

§439.7. *Procedures.*

§439.9. *Eligibility.*

§439.11. *Grading.*

§439.13. *Performance Skills.*

§439.15. *Testing for Certification Status.*

§439.17. *Testing for Proof of Proficiency.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 23, 1996.

TRD-9612330

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 918-7189



The Texas Commission on Fire Protection proposes new §§439.5, 439.7, 439.9, 439.11, 439.13, 439.15, and 439.17, concerning examinations for certification. The changes to §439.5 concerning definitions clarify that tests may be written only, or include both a written portion and a performance skills portion. The change to §439.7 concerning procedures requires that a second attempt to pass the commission examination must be exercised within 180 days of the first failure or the examinee must requalify by repeating an approved curriculum applicable to the examination. The changes to §439.9 clarify prohibitions on communication of the contents of examinations to persons preparing to take the examination. Specifically, it prohibits any person, not just examinees, from disclosing examination contents. Changes to §439.11 concerning grading require the examinee to demonstrate performance skill objectives that are consistent with performance evaluation forms provided by the commission. The changes to §439.13 concerning performance skill evaluation require at least three performance skill objectives be evaluated by staff examiners or field examiners under the supervision of a staff examiner. It also requires performance skill objectives to consist of one skill relating to self-contained breathing apparatus and at least two other skills identified as critical skills in Section I of the Performance Evaluation Forms booklet. The changes provide for remedial training in the failed skill(s) after the initial retest before the final retest can be conducted. The changes also allow for at least seven performance skill objectives selected by the commission to be evaluated by an approved field examiner at a certified training facility. Finally, it allows the instructor of the particular subject to



evaluate the performance skill, provided the instructor is an approved field examiner. Changes to §439.15 concerning testing for proof of proficiency rename the section, amend the continuing education exemption for the skills test to require twenty hours of continuing education for each year the person's certificate has been inactive, not just the last three years, require at least half of the continuing education hours be hands-on performance skills and clarifies in subsection (b)(3)(C) that "another jurisdiction" means "a state other than Texas or a military jurisdiction". Finally, §439.17 is renamed and amended to allow the continuing education exemption from the skills portion of the test for persons who have not been certified in a particular discipline only if it has been less than four years since an individual passed the performance skills portion of the examination for that discipline. It also requires that the continuing education be in subjects contained in the basic curriculum for the discipline. Finally, the section is also amended to delete reference to experience requirements for out-of-state or military applicants. The new sections have an effective date of January 1, 1997.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for the state. Local governments that operate approved training facilities for structure fire protection personnel will experience an increase in administrative costs of approximately \$15.00 per student associated with evaluating performance skills objectives in academies.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the new program will promote uniform performance skills testing and training and ensures that 100% of the performance skills will be tested over time. If a training academy is operated for a local government by a private business the cost of compliance for large and small business will be the same as estimated for local governments: approximately \$15.00 per student. The cost to individuals required to comply with the new sections may increase by approximately \$15.00 per student if academies pass on the administrative costs to students. There is no local employment impact resulting from the new section. The commission has determined that the proposed amendment relating to examinations for certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286.

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.032(b), concerning basic certification examinations.

Texas Government Code, §419.032(b) is affected by the proposed new sections.

§439.5. *Definitions.*

The following words and terms used in this chapter, have the following definitions unless the context clearly indicates otherwise.

**Certificate of Completion**-A signed statement certifying that an individual has successfully completed a commission approved basic certification curriculum for a particular discipline, including having been evaluated by field examiners on performance skills identified by the commission. The Certificate of Completion will be on a form provided by the commission and is to be completed and signed by the provider of training and issued to the individual upon successful completion of the training. The certificate of completion must, as a minimum, identify the provider of training, the course I.D. number, the course approval number, hours of instruction, date issued, curriculum name, training officer or course coordinator, and the name of the person completing the course. The certificate of completion qualifies an individual to take an original certification examination.

**Commission** -The Texas Commission on Fire Protection.

**Curriculum**-The competencies established by the commission as a minimum requirement for certification in a particular discipline.

**Eligibility** -A determination of whether or not an individual has met the requirements set by the commission and would therefore be allowed to take a commission examination.

**Endorsement of eligibility**-A signed statement testifying to the fact that an individual has met all requirements specified by the commission and is qualified to take a commission examination. An endorsement of eligibility will be issued, when appropriate, by a member of the commission staff. An endorsement of eligibility qualifies an individual to take a proficiency examination or an examination for certification status.

**Examination**-A state test administered by the commission which an examinee must pass as one of the requirements for certification. Exams will be based on curricula as currently adopted in the Commission Certification Curriculum Manual. The state test can consist of only a written test or it can consist of a test that contains both a written portion and a performance skills portion.

**Examinee**-An individual who has met the commission requirements and therefore qualifies to take the commission examination.

**Field examiner**-An individual that has successfully completed the commission administered field examiner orientation and has received a certificate of completion from the commission. An approved field examiner must sign an agreement to comply with the commission's testing procedures. The field examiner must as a minimum, possess a Fire Service Instructor Certification, or a Fire Education Specialist Certification, or an Associate Instructor Certification. The field examiner must be approved by the commission to instruct all subject areas identified in the curriculum that they will be evaluating. The field examiner must work under the supervision of a staff examiner to administer commission examinations, except when evaluating performance skills during an approved basic certification school. The field examiner must receive an examiner orientation course every three years administered by a certified instructor authorized by the commission.

**Staff examiner**-A member of the commission staff who has been assigned by the commission, the responsibility to administer a commission examination. A staff examiner who conducts or supervises performance skill evaluations must meet the same requirements as field examiners.

§439.7. *Procedures.*

(a) Procedures for conducting written and/or performance examinations are determined by the commission.

(b) The commission shall prescribe the content of any certification examination that tests the knowledge and/or skill of the examinee concerning the discipline addressed by the examination.

(c) An individual who fails to pass a commission written examination will be given one additional opportunity to pass the examination. This opportunity must be exercised within 180 days after the date of the first failure. An examinee who fails to pass the examination within the required time may not sit for the same examination again until the examinee has re-qualified by repeating the entire approved curriculum applicable to that examination.

(d) To apply for a commission examination, the designated training officer or coordinator of the entity providing the training must have completed and submitted the Course/School Prior Approval Submission Form to the commission 20 calendar days prior to the proposed starting date of the course. Upon commission approval of the course, the commission will tentatively schedule a time and place for the examination. A reasonable attempt shall be made to schedule the examination as soon as possible after the completion of the applicable course and at a place agreeable to the provider of training. The provider of training will receive the following:

(1) Notice of Course Approval—This document will serve as notification that the course has been approved by the commission and will contain the Approval Number assigned by the commission, the course I.D. number and the number of hours approved for the course.

(2) Application for Testing form—The provider of training must have each examinee complete the Application for Testing form and return it to the commission office no later than the tenth day of instruction. In no case may the Application for Testing be submitted less than 14 calendar days prior to the tentatively scheduled examination date. The commission, upon receipt of the Application for Testing form, will confirm the time and place for the examination.

(3) Certificate of Completion form—This form must be completed by the provider of training and issued to each student when the student has successfully completed the applicable curriculum.

(e) Commission examinations, or retests, for less than eight examinees must be conducted in Austin, Texas, or other place designated by the commission. The commission must coordinate with the provider of training as to the time of the examination.

(f) Commission examinations, or retests, for less than eight examinees must be conducted in accordance with this section, provided that entity providing the training agrees to pay an examination fee equal to amount that would be charged for 8 examinees.

(g) If a performance test is part of the commission examination, examinees that are required to take the commission examination in Austin, Texas, or other place designated by the commission, shall be required to furnish a complete set of protective clothing that complies with §435.1(2) of this title (relating to Protective Clothing). Examinees are encouraged, but not required, to provide a self-contained breathing apparatus that complies with §435.3(2) of this title (relating to Self-Contained Breathing Apparatus) that the examinee is familiar with and an extra full cylinder.

(h) If the designated training officer or coordinator of the entity providing the training determines that the time and/or place of the examination as set by the commission is not acceptable for good cause, he may request the commission to reschedule or relocate the examination providing the request is received at least 20 days prior to the original scheduled time of the examination or the new proposed time, whichever would result in the earliest notification. The commission shall give all such request due consideration and may reschedule or relocate the examination as necessary.

(i) Each examination must be administered by a member of the commission staff known as a "Staff Examiner."

(j) The staff examiner may administer the examination alone or with the assistance of one or more additional examiners. The additional examiners shall be known as field examiners and shall be appointed by the commission.

(k) The staff examiner must:

(1) ensure that the examination remains secure and is conducted under conditions warranting honest results; and

(2) collect all examination materials from any examinee who is dismissed.

(l) The staff or field examiner must:

(1) monitor the examination while in progress;

(2) control entrance to and exit from the test site;

(3) permit no one in the room while the written test is in progress except examiners, examinees, and commission staff;

(4) assign or re-assign seating; and

(5) bar admission to or dismiss any examinee who fails to comply with any of the provisions of subsection (a) and (b) of this section.

(m) Examination booklets, answer sheets, scratch paper and grade roster(s) will be delivered to the staff examiner by means specified by the commission. The staff examiner must immediately document any errors detected in the examination materials provided.

(n) The staff examiner must remit to the commission all examination booklets, answer sheets and scratch paper in the return container provided by the commission immediately following the completion of the written examination.

(o) All official grading and notification must come from the commission. The commission staff must inform the training officer or coordinator of preliminary test results within three business days after completion of the examination. The commission staff must notify the training officer or coordinator of the official test results in writing within 30 days after completion of the examination.

(p) The commission will provide one individual written grade report to each examinee, within 30 days after the completion of the examination. This report may be mailed to an address specified by the examinee. If the written grade report should prove to be undeliverable, it shall be the responsibility of the examinee to contact the commission office to make arrangements for an additional grade report.

(q) If performance skills are required as part of a certification examination, the entity applying for the certification examination shall be responsible for providing the required number of Approved Field

Examiners. The number of Field Examiners shall be determined by the commission.

(r) Each written examination may have two types of questions: pilot and active. Pilot questions are new questions placed on the examination for statistical purposes only. These questions do not count against an examinee if answered incorrectly.

(s) The Basic Fire Fighter Certification examination includes 150 active questions with an option of adding up to 20 pilot questions. The time allowed for the completion of the written examination will not exceed three hours.

#### *§439.9. Eligibility.*

(a) Eligibility to sit for a state examination is based, generally, upon the examinee completing the training requirements appropriate to that examination. However, an examination may not be taken by one who currently holds an active certificate from the commission in the discipline to which the examination pertains.

(b) In order to qualify for a commission examination, the examinee must:

(1) meet or exceed the minimum requirements set by the commission as a prerequisite for the specified examination;

(2) provide the staff examiner with a copy of a Certificate of Completion for the course required for the specific examination sought or an endorsement of eligibility issued by the commission;

(3) bring to the test site and display upon request some identification which contains a photograph of the examinee;

(4) report on time, to the proper location; and

(5) comply with all the written and verbal instructions of the examiner.

(c) No person shall be permitted to:

(1) violate any of the fraud provisions of this section;

(2) disrupt the examination;

(3) bring into the examination site any books, notes, or other written materials related to the content of the examination;

(4) refer to, use, or possess any such written material at the examination site;

(5) give or receive answers or communicate in any manner with another examinee during the examination;

(6) communicate at any time or in any way, the contents of an examination to another person for the purpose of assisting or preparing a person to take the examination;

(7) steal, copy, or in any way part of the examination;

(8) engage in any deceptive or fraudulent act either during an examination or to gain admission to it; or

(9) solicit, encourage, direct, assist, or aid another person to violate any provision of this section.

#### *§439.11. Grading.*

(a) For a score to be valid and remain valid:

(1) the examinee must complete the answer sheet, or otherwise record the answers, as instructed by the examiner; and

(2) if performance skills are required as a part of the examination, the examinee must demonstrate performance skill objectives in a manner consistent with performance evaluation forms provided by the commission. Passage of a performance skill requires successful completion of all mandatory tasks and accumulation of the number of points required for passage on each individual performance evaluation form.

(b) The minimum passing score on each written examination shall be 70%. This means that 70% of the total possible valid questions must be answered correctly. The commission may, at its discretion, invalidate any question.

(c) If the commission invalidates an examination score for any reason, it may also, at the discretion of the commission and for good cause shown, require a retest to obtain a substitute valid test score.

#### *§439.13. Performance Skill Evaluation.*

(a) State performance skill evaluation. If performance skill objectives are part of an approved curriculum the examinee must complete a state performance skill evaluation in accordance with subsection (b) of this section. The state performance skill evaluation may be part of an original certification examination administered at the conclusion of a basic certification course at an approved training facility, as part of a Test for Certification Status, or as part of a commission examination for Proof of Proficiency.

(b) Evaluation procedures. The state performance skill evaluation must consist of at least three successfully completed performance skill objectives evaluated by staff examiners or by field examiners under the supervision of a staff examiner after completion of an approved curriculum.

(1) The performance skill objectives must consist of one skill pertaining to self-contained breathing apparatus and at least two other skills identified as a critical skill in Section I of the Performance Evaluation Forms booklet.

(2) Each student's performance evaluation form for each skill must be signed by the examiner performing the evaluation.

(3) An examinee who fails a performance skill evaluation may be allowed a retest at a time and place to be determined by the staff examiner. If the candidate fails the retest, remedial training conducted by a certified instructor is required for a second retest. Remedial training must be of no less duration than the recommended curriculum instructional hours for the section in which the failed skill(s) is reflected. An examinee being retested on a performance skill must be retested on any skill, randomly selected by the staff examiner, from the same subject area as the performance skill objective that was failed.

(4) If the examinee fails the final retest as part of a state performance skill evaluation, the examinee must requalify by repeating the entire curriculum applicable to the examination.

(c) Original certification examination. If performance skill objectives are part of an original certification examination, the examinee must be evaluated for competency by an approved field examiner at a certified training facility on at least seven successfully completed performance skill objectives selected by the commission to qualify for a state performance skill evaluation. The evaluation for competency to qualify for the state performance skills evaluation may occur at any time during the course of instruction. The number

of opportunities to successfully complete particular performance skill objectives evaluated during an academy is at the discretion of the training officer or course coordinator. The training facility must maintain copies of performance evaluation forms on each examinee to document competency. The instructor of a particular subject may not evaluate the performance skill related to that subject unless the instructor is an approved field examiner. At the conclusion of a course at an approved training facility, the examinee must complete the state performance skill evaluation in accordance with subsection (b) of this section.

(d) Testing for certification status. If performance skill objectives are part of a commission examination as provided in §439.17 of this title (relating to Testing for Certification Status), the performance skill evaluation must consist of at least three successfully completed performance skill objectives evaluated in accordance with subsection (b) of this section by staff examiners or by field examiners at an approved training facility with the consent of its training officer or course coordinator.

(e) Proficiency examination. If performance skill objectives are part of a commission examination as provided in §439.15 of this title (relating to Testing for Proof of Proficiency), the performance skill evaluation must consist of at least three successfully completed performance skill objectives evaluated in accordance with subsection (b) of this section by staff examiners or by field examiners at an approved training facility with the consent of its training officer or course coordinator.

*§439.15. Testing for Proof of Proficiency.*

(a) An individual whose certificate(s) has been expired for one year or longer may not renew the certificate or certificates that were previously held.

(b) The individual may obtain a new certificate or certificates in the discipline or disciplines which was previously held by becoming employed to a position as defined in §421.5 of this title (relating to definition of fire protection personnel) and:

(1) passing a commission proficiency examination pertaining to the discipline or disciplines which was previously held and becoming certified within the time specified for that discipline or disciplines;

(A) If performance skills are part of the proficiency examination, the individual must pass the proficiency performance skills part of the examination unless proof is provided of compliance with the continuing education requirement for the discipline, as specified in Chapter 441 of this title (pertaining to Continuing education), for each year the person's certificate has been inactive.

(B) The required hours of continuing education shall be from Track A only. At least half of the required hours of continuing education shall be hands-on performance skills.

(C) The proficiency examination must be passed prior to assignment to fire suppression duties.

(2) completing the current requirements, set by the commission for the discipline or disciplines previously held, that would be applied to an individual that had not been certified by the commission; or

(3) applying for a new certification in a discipline that was previously held without taking the proficiency examination or repeating the requirements for certification in the discipline to

which the individual was previously certificated if the individual has complied with the continuing education requirement, for the discipline that was previously held, as specified in Chapter 441 of this title, pertaining to Continuing Education; and

(A) has continuously held one or more of the following certifications:

(i) Structural Fire Protection Personnel;

(ii) Aircraft Fire Fighting and Rescue Fire Protection Personnel;

(iii) Marine Fire Protection Personnel;

(iv) Fire Prevention Personnel;

(v) Fire and Arson Investigator;

(vi) Fire Protection Personnel Instructor; or

(B) has been employed full-time as a fire protection employee, without a break in service of one year or longer, by a nongovernmental entity not regulated by the commission; or

(C) has been employed in a fire protection personnel position in another jurisdiction (state other than Texas, or military) without a break in service of one year or longer.

(c) For the purposes of this section, the time that a person serves in the military who is called to active duty in accordance with applicable federal law or that a person serves in the state legislature who qualifies for legislative leave under the provisions of Texas Civil Statutes, Article 6252-4c, is not considered a break in service for any reason and the person is not required to complete the examination requirement upon return to employment to a fire protection personnel position in order to obtain a new certificate, provided that the individual must comply with the continuing education requirement applicable to the certificate previously held by the individual after the effective date of this rule except as provided by federal law.

*§439.17. Testing For Certification Status.*

(a) If an individual who has never held certification in a discipline defined in §421.5, (relating to fire protection personnel), seeks certification in that discipline two years or longer after passing a commission examination pertaining to that discipline, the individual shall:

(1) complete all requirements and become certified by the commission within the time specified for that discipline; and

(2) successfully complete the current commission requirements for certification in that discipline; or

(3) pass a commission certification examination pertaining to that discipline. The certification examination for some disciplines consists of a written examination only, while the certification examination for other disciplines consists of both a written portion and a performance skills portion. In any case, all portions of an examination must be passed before the individual is considered to have passed the examination. The certification examination must be passed prior to assignment to fire suppression duties. If it has been less than four years since an individual passed the performance skills portion of an examination pertaining to a discipline, the individual may be exempted from that portion of the examination if the individual can document twenty hours of continuing education for each year since the individual last passed the performance skills portion of an examination pertaining to the discipline. The continuing education must

be in subjects contained in the basic curriculum for the discipline. At least one-half of the continuing education must be hands-on performance skills.

(b) If an individual who has served in a position defined by the commission, as fire protection personnel, in a state other than Texas or in a branch of the military, wishes to become eligible for certification in the state of Texas, the individual must:

(1) successfully complete the current commission requirements for certification in the pertinent discipline; or

(2) document equivalent training to that required by the commission for certification in the discipline in question, and pass a commission examination for certification status, pertaining to the discipline and be certified by the commission within the time specified for that discipline. If the individual is employed as a structure fire protection person, then the examination for certification status must be passed prior to assignment to fire suppression duties.

(c) An individual who fails to pass a commission examination for certification status will be given one additional opportunity to pass the examination. After two failures, the examinee must requalify by repeating the entire approved curriculum applicable to that examination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 21, 1996.

TRD-9612331

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 916-7189

## Chapter 473. Volunteer Fire Fighter

### 37 TAC §473.1

The Texas Commission on Fire Protection proposes an amendment to §473.1, concerning basic volunteer fire fighter certification. The amendment adds new language to allow IFSAC certificate holders from another jurisdiction who wish to challenge the commission examination for volunteer basic structural fire protection personnel if the person holds certification as Driver Operator in addition to Fire Fighter II.

Jack Yates, Volunteer Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local governments.

Mr. Yates also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the new requirement will ensure that out-of-state applicants meet the same requirements for fire fighters trained in Texas. There are no additional costs of compliance for small or large businesses. Individuals required to comply with the changes may incur additional training costs ranging from \$200 to \$500 depending on the source of training. There is no local employment impact resulting from the rule change. The commission has determined

that the proposed amendment relating to basic volunteer fire fighter personnel certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed amendment.

#### §473.1. Minimum Standards For Basic Volunteer Fire Fighter.

(a)-(f) (No change.)

**(g) Individuals from another jurisdiction who possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire Fighter II and Driver Operator (Fire Fighter III, Fire Officer I, and Driver Operator if accredited under the 1987 or earlier edition of NFPA 1001) shall be eligible to take the commission examination for basic volunteer fire fighter certification.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 21, 1996.

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Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 918-7189

### 37 TAC §§473.3, 473.5, 473.7

The Texas Commission on Fire Protection proposes amendments to §§473.3, 473.5, 473.7, concerning minimum standards for intermediate, advanced, and master volunteer fire fighter certification. The changes increase the years of experience for intermediate, advanced and master levels of certification from three, six, and nine years to four, eight, and twelve years, respectively. In addition, the National Fire Academy course requirements for intermediate and advanced levels are increased from 80 hours to 96 for Option #2, and from 40 hours to 48 hours for Option #3 to more closely align the classroom hours of NFA courses with college courses. The amendments have an effective date of January 1, 1997.

Jack Yates, Volunteer Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the sections are in effect there will be no fiscal implications for state and local governments.

Mr. Yates also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be recognition of higher levels of certification with appropriate levels of training and experience will enable those persons holding such certifications to better serve local communities. There will be no additional costs of compliance for small or large businesses. Individuals required to comply with the changes may incur additional training costs of approximately \$40.00 per person as a result of the increase in NFA hour requirements. There is no local employment impact resulting from the change. The commission has determined that the proposed amendments relating to minimum standards for volunteer fire fighter certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071, is affected by the proposed amendments.

*§473.3. Minimum Standards For Intermediate Volunteer Fire Fighter.*

(a) Applicants for Intermediate Volunteer Fire Fighter Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Volunteer Fire Fighter Certification as defined in §473.1 of this title (relating to Minimum Standards for Basic Volunteer Fire Fighter Certification).

(2) acquire a minimum of **four** [three] years of fire protection experience and complete the courses listed in one of the following options:

(A) Option #1 - Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsection (c) and (d) of this section;

(B) Option #2 - Complete a minimum of **96** [80] hours of instruction in any National Fire Academy courses.

(C) Option #3 - Successfully complete three semester hours of college courses listed in Option #1 and a minimum of **48** [40] hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Volunteer Fire Fighter Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission

Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Volunteer Fire Fighter Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

*§473.5. Minimum Standards For Advanced Volunteer Fire Fighter Certification.*

(a) Applicants for Advanced Volunteer Fire Fighter certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Volunteer Fire Fighter Certification as defined in §473.3 of this title (relating to Minimum Standards for Intermediate Volunteer Fire Fighter Certification).

(2) acquire a minimum of **eight** [six] years of fire protection experience and complete the courses listed in one of the following options:

(A) Option #1 - Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsection (c) and (d) of this section; or

(B) Option #2 - Complete a minimum of **96** [80] hours of instruction in any National Fire Academy courses; or

(C) Option #3 - Successfully complete three semester hours of college courses listed in Option #1 and a minimum of **48** [40] hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Advanced Volunteer Fire Fighter Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Volunteer Fire Fighter Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

*§473.7. Minimum Standards for Master Volunteer Fire Fighter Certification.*

(a) Applicants for Master Volunteer Fire Fighter Certification must complete the following requirements:

(1) hold as a prerequisite an **Advanced** [Advance] Volunteer Fire Fighter Certification as defined in §473.5 of this title (relating to Minimum Standards for Advanced Volunteer Fire Fighter Certification); and

(2) acquire a minimum of **twelve** [nine] years of fire protection experience, and 60 college semester hours **or an associate degree**, which includes at least 15 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Volunteer Fire Fighter Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 21, 1996.

TRD-9612524

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 918-7189



## Chapter 476. Volunteer Fire Investigator

### 37 TAC §§476.5, 476.7, 476.9

The Texas Commission on Fire Protection proposes amendments to §§476.5, 476.7, 476.9, concerning standards for intermediate, advanced, and master volunteer fire investigator certification. The changes increase the years of experience for intermediate, advanced and master levels of certification from three, six, and nine years to four, eight, and twelve years, respectively. In addition, the National Fire Academy course requirements for intermediate and advanced levels are increased from 80 hours to 96 for Option #2, and from 40 hours to 48 hours for Option #3 to more closely align the classroom hours of NFA courses with college courses. The amendments have an effective date of January 1, 1997.

Jack Yates, Volunteer Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended sections are in effect there will be no fiscal implications for state and local governments.

Mr. Yates also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be recognition of higher levels of certification with appropriate levels of training and experience will enable those persons holding such certifications to better serve local communities. There will be no additional costs of compliance for small or large businesses. Individuals required to comply with the changes may incur additional training costs of approximately \$40.00 per person as a result of the increase in NFA hour requirements. There is no local employment impact resulting from the change. The commission has determined that the proposed amendments relating to minimum standards for volunteer fire investigator certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to es-

tablish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071, is affected by the proposed amendments.

*§476.5. Minimum Standards For Intermediate Volunteer Fire Investigator.*

(a) Applicants for Intermediate Volunteer Fire Investigator Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Volunteer Fire Investigator Certification as defined in §476.3 of this title (relating to Minimum Standards for Basic Volunteer Fire Investigator Certification).

(2) acquire a minimum of **four** [three] years of fire protection experience and complete the courses listed in one of the following options:

(A) Option #1 - Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsection (c) and (d) of this section;

(B) Option #2 - Complete a minimum of **96** [80] hours of instruction in any National Fire Academy courses.

(C) Option #3 - Successfully complete three semester hours of college courses listed in Option #1 and a minimum of **48** [40] hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Volunteer Fire Investigator Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Volunteer Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Volunteer Fire Investigator Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

*§476.7. Minimum Standards For Advanced Volunteer Fire Investigator Certification.*

(a) Applicants for Advanced Volunteer Fire Investigator certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Volunteer Fire Investigator Certification as defined in §476.5 of this title (relating to Minimum Standards for Intermediate Volunteer Fire Investigator Certification).

(2) acquire a minimum of **eight** [six] years of fire protection experience and complete the courses listed in one of the following options:

(A) Option #1 - Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsection (c) and (d) of this section; or

(B) Option #2 - Complete a minimum of **96** [80] hours of instruction in any National Fire Academy courses; or

(C) Option #3 - Successfully complete three semester hours of college courses listed in Option #1 and a minimum of **48** [40] hours in any National Fire Academy courses.

(D) Option #4 - Advanced Arson for Profit (Bureau of Alcohol, Tobacco, and Firearms, resident or field course, 80 hours).

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Advanced Volunteer Fire Investigator Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Volunteer Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Volunteer Fire Investigator Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

*§476.9. Minimum Standards for Master Volunteer Fire Investigator Certification.*

(a) Applicants for Master Volunteer Fire Investigator Certification must complete the following requirements:

(1) hold as a prerequisite an **Advanced** [Advance] Volunteer Fire Investigator Certification as defined in §476.7 of this title (relating to Minimum Standards for Advanced Volunteer Fire Investigator Certification); and

(2) acquire a minimum of **twelve** [nine] years of fire protection experience, and 60 college semester hours **or an associate degree**, which includes at least 15 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Volunteer Fire Investigator Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 21, 1996.

TRD-9612525

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 918-7189



## Chapter 478. Volunteer Fire Inspector

### 37 TAC §§478.5, 478.7, 478.9

The Texas Commission on Fire Protection proposes amendments to §§478.5, 478.7, 478.9, concerning standards for intermediate, advanced, and master volunteer fire inspector certification. The changes increase the years of experience for intermediate, advanced and master levels of certification from three,

six, and nine years to four, eight, and twelve years, respectively. In addition, the National Fire Academy course requirements for intermediate and advanced levels are increased from 80 hours to 96 for Option #2, and from 40 hours to 48 hours for Option #3 to more closely align the classroom hours of NFA courses with college courses. The amendments have an effective date of January 1, 1997.

Jack Yates, Volunteer Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended sections are in effect there will be no fiscal implications for state and local governments.

Mr. Yates also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be recognition of higher levels of certification with appropriate levels of training and experience will enable those persons holding such certifications to better serve local communities. There will be no additional costs of compliance for small or large businesses. Individuals required to comply with the changes may incur additional training costs of approximately \$40.00 per person as a result of the increase in NFA hour requirements. There is no local employment impact resulting from the change. The commission has determined that the proposed amendments relating to minimum standards for volunteer fire inspector certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071, is affected by the proposed amendments.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071, is affected by the proposed amendments.

*§478.5. Minimum Standards For Intermediate Volunteer Fire Inspector.*

(a) Applicants for Intermediate Volunteer Fire Inspector Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Volunteer Fire Inspector Certification as defined in §478.3 of this title (relating to Minimum Standards for Basic Volunteer Fire Inspector Certification).



(2) acquire a minimum of **four** [three] years of fire protection experience and complete the courses listed in one of the following options:

(A) Option #1 - Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsection (c) and (d) of this section;

(B) Option #2 - Complete a minimum of **96** [80] hours of instruction in any National Fire Academy courses.

(C) Option #3 - Successfully complete three semester hours of college courses listed in Option #1 and a minimum of **48** [40] hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Volunteer Fire Inspector Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Volunteer Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Volunteer Fire Inspector Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

*§478.7. Minimum Standards For Advanced Volunteer Fire Inspector Certification.*

(a) Applicants for Advanced Volunteer Fire Inspector certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Volunteer Fire Inspector Certification as defined in §478.5 of this title (relating to Minimum Standards for Intermediate Volunteer Fire Inspector Certification).

(2) acquire a minimum of **eight** [six] years of fire protection experience and complete the courses listed in one of the following options:

(A) Option #1 - Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsection (c) and (d) of this section; or

(B) Option #2 - Complete a minimum of **96** [80] hours of instruction in any National Fire Academy courses; or

(C) Option #3 - Successfully complete three semester hours of college courses listed in Option #1 and a minimum of **48** [40] hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Advanced Volunteer Fire Inspector Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Volunteer Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Volunteer Fire Inspector Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

*§478.9. Minimum Standards for Master Volunteer Fire Inspector Certification.*

(a) Applicants for Master Volunteer Fire Inspector Certification must complete the following requirements:

(1) hold as a prerequisite an **Advanced** [Advance] Volunteer Fire Inspector Certification as defined in §478.7 of this title (relating to Minimum Standards for Advanced Volunteer Fire Inspector Certification); and

(2) acquire a minimum of **twelve** [nine] years of fire protection experience, and 60 college semester hours **or an associate degree**, which includes at least 15 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Volunteer Fire Inspector Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 21, 1996.

TRD-9612526

Jack Woods

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: October 7, 1996

For further information, please call: (512) 918-7189

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# WITHDRAWN RULES

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An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

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## **TITLE 7. BANKING AND SECURITIES**

### **Part I. Texas Department of Banking**

#### **Chapter 25. Prepaid Funeral Contracts**

##### **Subchapter B. Regulation of Licenses**

###### **7 TAC §25.7**

The Texas Department of Banking has withdrawn from consideration for permanent adoption the proposed new §25.7, which appeared in the April 26, 1996, issue of the *Texas Register* (21 TexReg 3299).

Issued in Austin, Texas, on August 26, 1996.

TRD-9612497

Everette D. Jobe

General Counsel

Texas Department of Banking

Effective date: August 26, 1996

For further information, please call: (512) 475-1300.

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###### **7 TAC §25.26**

The Texas Department of Banking has withdrawn from consideration for permanent adoption the proposed new §25.26, which appeared in the April 16, 1996, issue of the *Texas Register* (21 TexReg 3301).

Issued in Austin, Texas, on August 26, 1996.

TRD-9612498

Everette D. Jobe

General Counsel

Texas Department of Banking

Effective date: August 26, 1996

For further information, please call: (512) 475-1300.

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## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **Part XIII. Texas Commission on Fire Protection**

#### **Chapter 423. Fire Suppression**

##### **Subchapter A. Minimum Standards for Structure Fire Protection Personnel Certification**

###### **37 TAC §423.7**

The Texas Commission on Fire Protection has withdrawn the adopted amendment §423.7, which appeared in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9280).

Issued in Austin, Texas, on August 23, 1996.

TRD-9612317

Jack Woods

General Counsel

Texas Commission on Fire Protection

Effective date: September 13, 1996

For further information, please call: (512) 918-7189.

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##### **Subchapter B. Minimum Standards for Aircraft Crash and Rescue Fire Protection Personnel**

###### **37 TAC §423.209**

The Texas Commission on Fire Protection has withdrawn the adopted amendment §423.209, which appeared in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9281).

Issued in Austin, Texas, on August 23, 1996.

TRD-9612318

Jack Woods

General Counsel

Texas Commission on Fire Protection

Effective date: September 13, 1996

For further information, please call: (512) 918-7189.

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##### **Subchapter C. Minimum Standards for Marine Fire Protection Personnel**

###### **37 TAC §423.309**

The Texas Commission on Fire Protection has withdrawn the adopted amendment §423.309, which appeared in the April 30, 1996, issue of the *Texas Register* (21 TexReg 3712).

Issued in Austin, Texas, on August 23, 1996.

TRD-9612336

Jack Woods

General Counsel

Texas Commission on Fire Protection

Effective date: September 13, 1996

For further information, please call: (512) 918-7189.



## Chapter 429. Minimum Standards for Fire Inspectors

### 37 TAC §429.9

The Texas Commission on Fire Protection has withdrawn the adopted amendment §429.9, which appeared in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9281).

Issued in Austin, Texas, on August 23, 1996.

TRD-9612337

Jack Woods

General Counsel

Texas Commission on Fire Protection

Effective date: September 13, 1996

For further information, please call: (512) 918-7189.



## Chapter 431. Minimum Standards for Fire and Arson Investigator

### 37 TAC §431.9

The Texas Commission on Fire Protection has withdrawn the adopted amendment §431.9, which appeared in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9281).

Issued in Austin, Texas, on August 23, 1996.

TRD-9612338

Jack Woods

General Counsel

Texas Commission on Fire Protection

Effective date: September 13, 1996

For further information, please call: (512) 918-7189.



## Chapter 439. Examinations for Certification

### 37 TAC §§439.5, 439.7, 439.15, 439.17

The Texas Commission on Fire Protection has withdrawn the adopted amendments of §§439.5, 439.7, 439.15, and 439.17, which appeared in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9282).

Issued in Austin, Texas, on August 23, 1996.

TRD-9612316

Jack Woods

General Counsel

Texas Commission on Fire Protection

Effective date: September 13, 1996

For further information, please call: (512) 918-7189.



# ADOPTED RULES

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An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

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## TITLE 1. ADMINISTRATION

### Part V. General Services Commission

#### Chapter 111. Executive Administration Division

##### Cost of Copies of Open Records

###### 1 TAC §§111.61-111.70

The General Services Commission adopts the repeal of §§111.61-111.70, concerning cost of copies of open records without changes to the proposed text as published in the July 11, 1996, issue of the *Texas Register* (21 TexReg 5215).

The repeal is necessary to allow the General Services Commission to adopt new §§111.61-111.70, in accordance with H.B. 1718, 74th Leg. R.S. (1995), which amended the Government Code, Chapter 552 (the "Public Information Act").

The repeal of §§111.61-111.70 allows the General Services Commission to adopt new rules to implement pertinent provisions of the Government Code, Chapter 552 (the "Public Information Act") that were amended by H.B. 1718, 74th Leg. R.S. (1995); and deletes obsolete language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Government Code, Chapter 552, Subchapter F, §552.262 (the "Public Information Act") which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 28, 1996.

TRD-9612573

Judy Ponder

General Counsel

General Services Commission

Effective date: September 18, 1996

Proposal publication date: June 11, 1996

For further information, please call: (512) 463-3960



##### Cost of Copies of Public Information

###### §§111.61-111.70

The General Services Commission (the "GSC") adopts new §§111.61-111.70 concerning charges for public records. Sections 111.63 and 111.66 are adopted with changes to the proposed text as published in the June 11, 1996, issue of the *Texas Register* (21 TexReg 5215). Sections 111.61, 111.62, 111.64, 111.65, 111.67, 111.68, 111.69 and 111.70 are adopted without changes and will not be republished.

The new sections establish guidelines to be used by governmental bodies to recover up to the full cost of providing copies of, or access to public records.

Section 111.63, the text of subsections (c) and (d) as published have been reversed in order and changes have been made to both subsections. Subsections (c) and (d) were reversed in order to eliminate confusion regarding charges for personnel costs. Subsection (c)(1) has been amended to read "Programming personnel. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer's time. (1) The hourly charge for a programmer is \$26.00 an hour, including fringe benefits. Only programming services shall be charged at this hourly rate." The language was amended to more accurately reflect that the services of a programmer exceed entry of data and, therefore, justify the hourly charge for the programmer services. Subsection(d)(1)(2)(3) has been changed to read "Other personnel charge. (1) The charge for other personnel costs incurred in processing a request for public information is \$15.00 an hour, including fringe benefits. Where applicable, the other personnel charge may include the actual time to locate, compile, and reproduce the requested information. (2) An other personnel charge shall not be billed in connection with complying with requests that are for 50 pages or fewer pages of paper records, unless the documents to be copied are located in: (A) more than one building; or (B) a remote storage facility. (3) Other personnel time shall not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information: (A) to determine whether the governmental body will raise any exceptions to disclosure of the requested information under Subchapter C of the Public Information Act; or (B) to research or prepare a request for a ruling by the attorney general's office pursuant to the §552.301 of the Public Information Act. " The language was amended to add the word "other" before the word "personnel" to distinguish personnel referred to in these subsections from pro-

gramming personnel. Subsection(e)(1)(3) has been changed to read "Overhead charge. (1) whenever any personnel charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the specific personnel charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If a governmental body chooses to recover such costs, a charge shall be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide. (3) The overhead charge shall be computed at 20% of the charge made to cover any personnel costs associated with a particular request. " The language was amended to clarify that an overhead charge may be included in any personnel charge. Subsection (f)(1)(2) has been changed to read "Microfiche and microfilm charge. (1) If a governmental body already has information that exists on microfiche and microfilm and has copies available for sale or distribution the charge for a copy must not exceed the cost of its reproduction. If no copies of the requested microfiche or microfilm are available and the information on the microfiche or microfilm can be released in its entirety, the governmental body should make a copy of the microfiche or microfilm. The charge for a copy shall not exceed the cost of its reproduction. The Texas State Library and Archives Commission has the capacity to reproduce microfiche and microfilm for state agencies. Governmental bodies that do not have in-house capability to reproduce microfiche or microfilm, may charge the actual costs of having the reproduction made commercially. (2) If only a master copy of information in microform is maintained, the charge is \$.10 per page for standard size paper copies, plus any applicable personnel and overhead charge for more than 50 copies." The language was amended for clarity and conformity of terms. Subsection (g)(1)(2) have been amended to read "Remote document retrieval charge. (1) Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by governmental bodies to store current records on-site. State agencies are encouraged to store inactive or non-current records with the Texas State Library and Archives Commission, which is equipped to provide such a service to state agencies free of charge. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services. (2) If a governmental body has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional personnel charge shall be factored in for time spent locating documents at the storage location by the private company's personnel. If after delivery to the governmental body, the boxes must still be searched for records that are responsive to the request, a personnel charge is allowed in accordance with §111.61(d)(1) of this rule." Language was added to clearly delineate what personnel charges are applicable in responding to a request when a governmental body has a contract with a commercial records storage company.

Section 111.66(e)(f) have been amended to read " (e) If the governmental body does not have the required technological

capabilities to comply with the request in the format preferred by the requestor, the governmental body shall proceed in accordance with §552.228(c) of the Public Information Act. (f) If a governmental body receives a request requiring programming or manipulation of data, the governmental body should proceed in accordance with §552.231 of the Public Information Act. Manipulation of data under §552.231 applies only to information stored in electronic format." Reference to §552.231 of the Public Information Act was removed from subsection (e) to be addressed in subsection (f). Additional language was added to subsection (f) to clarify that the governmental body proceed in accordance with §552.231 regarding programming or manipulation of data.

The new sections implement H.B. 1718, 74th Leg., R.S. (1995) which amended Texas Government Code, Chapter 552, Subchapter F (Vernon 1996), referred to as the Public Information Act (the "Act") by establishing updated rates for providing public information, as well as procedures to obtain exemptions from all or part of the General Services Commission rules, and procedures for handling complaints of overcharges for copies of public information.

Seven letters were received from governmental bodies containing various comments. One comment concerned the definition of Client/Server. Five comments concerned programming personnel and other personnel charges. One comment questioned applicability of overhead to the personnel charges. Three comments pertained to personnel charges involving remote document retrieval. One comment each was received regarding recovery of costs for production of information on mylar, 9 track and 8mm tapes. One comment each was received regarding the ability to recover additional charges for postage, fax transmissions and costs specific to agencies. One comment each was received requesting consideration to what the usage costs represented, changes to language regarding violation of copyright due to reproduction of information, rewording to clarify references to microfiche and governmental bodies' authority to charge 25% more than the charges established by rule.

For - None

Against - City of Levelland, Bexar County Appraisal District, Texas Department of Human Services, Texas Department of Banking, City of Houston, Texas Department of Mental Health and Mental Retardation, and Texas Department of Transportation

The Bexar County Appraisal District stated that the definition of Client/Server System in §111.62 is incorrect because it includes X-Window environments using Unix Systems as an example. The comment goes on to state "An X-Terminal is a smart graphics terminal; the actual application executes on the Unix System just as if the application was being executed by a dumb terminal. The server is actually the X-Terminal and the client is the Unix System; the X-Terminal is the server providing Graphic Terminal Services to the application executing on the Unix System." It was suggested that the definition be changed to categorize computer systems into two groups, central processing and client/server and then to create sub-categories based on processor size. The GSC disagrees because the definition of Client/Server does not mention X-Terminals. It uses the "X-Window environment" merely as an

example of a client/server system. If a governmental body finds that its actual costs for producing information using computer technology, either for personnel or type of medium, is higher than what is reflected in the rules, an exemption can be requested under §111.64.

The Texas Department of Mental Health and Mental Retardation ("MHMR") suggested rewording of §111.63(e)(1) regarding the applicability of overhead charge to personnel charge. The GSC agreed and reversed the order of subsections (c) and (d) and provided pertinent changes in the text of all three subsections for clarification. MHMR also stated that the language in §111.63(f)(1) regarding microfiche and microfilm charge was confusing. GSC agreed and changes were made in the text to eliminate confusion. MHMR requested that fax charges be included in the rules. The GSC disagreed. In reality, assessing a fax charge would defeat the obvious purpose of providing information immediately upon request because payment cannot be remitted by fax. It is within an agency's discretion to determine the manner in which requestors are provided information. Nonetheless, an exemption can be requested for this charge.

The Texas Department of Banking (the "Department") suggested a change to §111.63(c)(2)(A) (currently (d)(2)(A)) to substitute the word "building" for the word "location". The GSC disagreed. This subsection paraphrases §552.261 of the Act which can only be amended by the legislature. Comment was made regarding the inability to charge for time spent by agency personnel to search for documents at a privately owned remote storage company or after documents have been delivered to the agency. Additional language has been provided in §111.63(g)(2) for clarification that agency personnel charges are allowable under §552.261 of the Act. The Department suggested charges for proposed estimate of postage to include cost of envelopes rather than actual costs and the fact that it would be helpful for agencies to establish fixed costs for production of information which is unique to the agency. The GSC disagreed. Under §552.221(2) of the Act, if a person requests information to be provided by mail and agrees to pay postage, an agency may charge for the envelope as a miscellaneous charge. If an agency produces information in a manner that is unique to the agency, an exemption may be requested in accordance with §111.64.

The City of Houston ("Houston") questioned the ability to recover personnel costs in §111.63(g)(2). This has been addressed by the language as amended to allow the ability to recoup personnel charges under §111.63(d)(1)(2). Houston states that disallowing charges other than copying charges in §111.65(a) is in direct contravention of Open Records Decisions Nos. 488 (1988) and 633(1995), the GSC disagreed. §111.65(a) mirrors §552.271 of the Act which was effective September 1, 1995. The Open Records Decisions referred to by Houston were written prior to the effective date of the §552.271 and are, therefore, not applicable. However, costs for personnel time can be recovered under §§111.63(d)(4) and 111.65(b).

The Texas Department of Human Services ("DHS") requested language for clarification of §111.63(h)(3) as to whether the usage costs are examples or costs that an agency must use in calculating the charges. The GSC disagreed. §111.63(h)(3)

is based on responses to a computer survey to which state agencies and governmental entities, including DHS, responded. The charges reflected in this section are high end averages. If the charges do not provide for recovery of costs, an exemption can be requested per §111.64. DHS suggested rewording of §111.64(c) to clarify distinction between state agencies and other governmental bodies. The GSC disagreed. The language is unambiguous as written. DHS then suggested revising §111.66(d). The GSC disagreed as it is the same language found in §552.228(b)(3) of the Act. DHS also suggested rewriting of §111.66(e) to eliminate confusion regarding manipulation of data. The GSC agreed and the language has been changed to clarify the section.

The City of Levelland ("Levelland") requested the deletion of proposed §111.63(c)(2)(3)(A)(B) (currently 111.63(d)(2)(3)(A)(B)) and 111.63(e)(2) regarding recovery of costs for personnel time and applicability of overhead charges. Levelland suggested language to allow for recovery of personnel time for attorney, legal assistant or any other person who reviews requested information to determine an exception to disclosure or to prepare an open records decision request. The GSC disagreed. Language has been amended to provide clarification of 111.63(e)(2). As to 111.63(d)(2)(3)(A)(B) the GSC disagreed because Levelland suggested language that is not only in conflict with the Act but also violates its spirit. The Act only provides cost recovery for the reproduction of records not for the withholding of such.

The Texas Department of Transportation ("TxDot") requested changes to §111.63(b)(2)(H)(I) regarding "thickness" and "width" of mylar. The GSC disagreed. The costs reflected are based on an average of the different thickness and the same width of the mylar. TxDot's exemption allows for actual recovery for its costs in this medium.

The new sections are adopted under the Texas Government Code, Chapter 552, Subchapter F, §552.262 ("the Public Information Act") which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

#### *§111.63. Charges for Providing Copies of Public Information.*

(a) The charges in this section to recover costs associated with providing copies of public information are based on estimated average costs to governmental bodies across the state. When actual costs are 25 percent higher than those used in these rules, governmental bodies other than agencies of the state, may request an exemption in accordance with §111.64 of this title (relating to Requesting an Exemption).

#### *(b) Copy charge.*

(1) Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has a printed image is considered a page.

(2) Nonstandard copy. The charges for nonstandard copies are:

(A) diskette—\$1.00;



(B) magnetic tape—\$11.00 - \$13.50 (depending on width - see §111.70 of this title (relating to the General Services Commission Charge Schedule));

(C) data cartridge—\$17.50 - \$35.00 (depending on series - see §111.70)

(D) tape cartridge—\$38.00 - 45.00 (depending on memory) - see §111.70)

(E) VHS video cassette—\$2.50;

(F) audio cassette—\$1.00;

(G) oversize paper copy (i.e.: 11" x 17", greenbar, bluebar)—\$.50;

(H) Mylar—\$.85 - \$1.35/linear ft. (depending on thickness - see §111.70);

(I) Blueprint/Blue-line paper—\$.20/linear ft. (all widths).

(3) The charges in this subsection are to cover the cost of materials onto which information is copied and do not reflect any additional charges that may be associated with a particular request.

(c) Programming personnel. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer's time.

(1) The hourly charge for a programmer is \$26.00 an hour, including fringe benefits. Only programming services shall be charged at this hourly rate.

(2) Governmental bodies that do not have in-house programming capabilities shall comply with requests in accordance with §552.231 of the Public Information Act.

(d) Other Personnel charge.

(1) The charge for other personnel costs, incurred in processing a request for public information is \$15.00 an hour, including fringe benefits. Where applicable, the other personnel charge may include the actual time to locate, compile, and reproduce the requested information.

(2) An other personnel charge shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in:

(A) more than one building; or

(B) a remote storage facility.

(3) Other personnel time shall not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:

(A) to determine whether the governmental body will raise any exceptions to disclosure of the requested information under Subchapter C of the Public Information Act; or

(B) to research or prepare a request for a ruling by the attorney general's office pursuant to §552.301 of the Public Information Act.

(4) When confidential information is mixed with public information in the same page, personnel time may be recovered for time spent to obliterate, blackout, or otherwise obscure confidential information in order to release the public information.

(e) Overhead charge.

(1) Whenever any personnel charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the specific personnel charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If a governmental body chooses to recover such costs, a charge shall be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(2) An overhead charge shall not be made for requests for copies of 50 pages or fewer of standard paper records.

(3) The overhead charge shall be computed at 20% of the charge made to cover any personnel costs associated with a particular request. Example: if one hour of personnel (programming, other personnel or a combination of both) is used for a particular request, the formula would be as follows: \$15.00 x .20 = \$3.00; or \$26.00 x .20 = \$5.20; or \$41.00 x .20 = \$8.20

(f) Microfiche and microfilm charge.

(1) If a governmental body already has information that exists on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies of the requested microfiche or microfilm are available and the information on the microfiche or microfilm can be released in its entirety, the governmental body should make a copy of the microfiche or microfilm. The charge for a copy shall not exceed the cost of its reproduction. The Texas State Library and Archives Commission has the capacity to reproduce microfiche and microfilm for state agencies. Governmental bodies that do not have in-house capability to reproduce microfiche or microfilm, may charge the actual costs of having the reproduction made commercially.

(2) If only a master copy of information in microform is maintained, the charge is \$.10 per page for standard size paper copies, plus any applicable personnel and overhead charge for more than 50 copies.

(g) Remote document retrieval charge.

(1) Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by governmental bodies to store current records on-site. State agencies are encouraged to store inactive or non-current records with the Texas State Library and Archives Commission, which is equipped to provide such a service to state agencies free of charge. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services.

(2) If a governmental body has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional personnel charge shall be factored in for time spent locating documents at the storage location by the private com-

pany's personnel. If after delivery to the governmental body, the boxes must still be searched for records that are responsive to the request, a personnel charge is allowed in accordance with §111.61(d)(1) of this title (relating to General).

(h) Computer resource charge.

(1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) These computer resource charges are not intended to substitute for cost recovery methodologies or charges, made for purposes other than responding to public information requests.

(3) The charges in this subsection are averages based on a survey of governmental bodies with a broad range of computer capabilities. Each governmental body using this cost recovery charge, shall determine which category(ies) of computer system(s) used to fulfill the public information request most closely fits its existing system(s), and set its charge accordingly. Type of System – Rate: Mainframe – \$10.00 per minute; Midsize – \$1.50 per minute; Client/Server – \$2.20 per hour; PC or LAN – \$1.00 per hour.

(4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather, it is solely to recover costs associated with the actual time required by the computer to execute a program. This time, called CPU time, can be read directly from the CPU clock, and most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (d) of this section. No charge should be made for computer print-out time. Example: If a mainframe computer is used, and the processing time is 20 seconds, the charges would be as follows:  $\$10.00 / 3 = \$3.33$ ; or  $\$10.00/60 \times 20 = \$3.33$ .

(5) A governmental body that does not have in-house computer capabilities shall comply with requests in accordance with the Government Code, Public Information Act, chapter 552, §552.231.

(i) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information, may be added to the total charge for public information.

(j) Postal and shipping charges. Governmental bodies may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

(k) Sales tax. Sales tax shall not be added on charges for public information.

(l) The commission shall reevaluate and update these charges as necessary.

§111.66. *Format for Copies of Public Information.*

(a) If a requesting party asks that information be provided on a diskette or other computer-compatible media, and the requested

information is electronically stored, the governmental body shall provide the information on computer-compatible media.

(b) The extent to which a requestor can be accommodated will depend largely on the technological capability of the governmental body to which the request is made.

(c) A governmental body is not required to purchase any hardware, software or programming capabilities that it does not already possess to accommodate a particular kind of request.

(d) Provision of a copy of public information in the requested medium shall not violate the terms of any copyright agreement between the governmental body and a third party.

(e) If the governmental body does not have the required technological capabilities to comply with the request in the format preferred by the requestor, the governmental body shall proceed in accordance with §552.228(c) of the Public Information Act.

(f) If a governmental body receives a request requiring programming or manipulation of data, the governmental body should proceed in accordance with §552.231 of the Public Information Act. Manipulation of data under §552.231 applies only to information stored in electronic format.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 28, 1996.

TRD-9612572

Judy Ponder

General Counsel

General Services Commission

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For further information, please call: (512) 936-0178

## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 7. Pesticides

##### 4 TAC §§7.1, 7.3, 7.8, 7.10-7.20, 7.22-7.30, 7.31

The Texas Department of Agriculture (the department) adopts amendments to §§7.1, 7.3, 7.8, 7.17-7.20, 7.22-7.26, and 7.31 and new 7.10-7.16 and 7.27-7.30, concerning pesticide regulations. Sections 7.1, 7.16, 7.25, 7.26 and 7.29 are adopted with changes to the proposed text as published in the July 12, 1996, issue of the *Texas Register* (21 TexReg 6314). Sections 7.3, 7.8, 7.10-7.15, 7.17-7.20, 7.22-7.24, 7.27-7.28 and 7.30-7.31 are adopted without changes and will not be republished.

The amendments and new sections are adopted to make the department's pesticide regulations consistent with changes made by the 74th Texas Legislature during the Sunset process of the department, to update citations, including citations of newly renumbered sections, update terminology and clarify existing regulations. Section 7.1 has been changed to add the definition of "adjoining" back into the regulations. Section 7.16(m)(1) has been changed to reflect the minimum informa-

tion that the department will require of sponsors when preparing a roster of applicators attending an accredited activity. Section 7.16(s)(3) has been changed to clarify that certified private applicators who choose not to license but wish to maintain certification under a certificate issued prior to January 10, 1989, will be required to recertify as specified for licensed private applicators according to this subsection. Section 7.25(c) has been changed as requested by comments received so that nursery and greenhouse operations may meet the minimum posting requirements for pesticide applications approved by EPA with a warning flag or sign.

Section 7.26(c)(3) has been changed so that any person with chemical hypersensitivities, allergies, or other medical conditions which may be aggravated by pesticide exposure and whose residence or place of employment is within 1/4 mile of the field on which pesticides are to be applied may continue to request prior notification. Comments were received from various organizations in opposition to the proposed change that would have eliminated the provision for persons with a medical condition who reside within 1/4 mile of a field to request prior notification. The proposal also deleted language that originally required that the land of the person requesting prior notification be adjoining to the land to which an application will be made. Based on comments received, the "adjoining" requirement was put back into subsection (c)(1) to apply to everyone except for persons requesting notification based on chemical hypersensitivities, allergies, or other medical conditions aggravated by pesticide exposure. Section 7.26(d)(6) has been changed to continue the requirement that a request based on a medical condition include a statement from a licensed physician. Section 7.26(n)(7)(A)(1) has been changed to correct a reference to old (h)(1)(A), which has been renumbered as new (g)(1)(A). Section 7.29(d) is adopted with changes made to correct a grammatical error.

The amendment to §7.1 adds definitions deleted from §7.25 and updates the definition of Extension Service. The amendment to §7.3(a)(3) increases the registration fee for pesticides distributed in the state. The fee change is made pursuant to a legislative mandate requiring state agencies to set fees at levels adequate to recover costs incurred in administering regulatory programs. The amendments to §7.8(b) delete the fee for one additional herbicide outlet to reflect the current herbicide law which no longer allows for two outlets at a single outlet fee and clarifies how a dealer must record distribution of a restricted use or state-limited-use pesticide to a nonlicensed person. Language already on forms that are required by the department is deleted.

New §7.10 provides certification requirements for applicators. New §7.11 provides licensing requirements for commercial and noncommercial applicators. New §7.12 provides specific license requirements for commercial applicators. New §7.13 provides requirements for commercial applicators to provide proof of financial responsibility. New §7.14 provides specific license requirements for noncommercial applicators. New §7.15 provides specific license requirements for private applicators. New §7.16 provides requirements for applicator recertification.

The amendments to §7.17 change the license expiration date and clarify language regarding failure to file a timely and complete application. Amendments to §7.19 clarify that a

business or individual who may not be licensed as a commercial applicator may register equipment owned by the company or individual as equipment to be used in commercial applications. Amendments to §7.24 delete 2,4,5-Trichlorophenoxyacetic acid (2,4,5-T), 2-(2,4,5-trichlorophenoxy)propionic acid (silvex), and orthoarsenic acid (arsenic acid) from the list of state-limited-use pesticides because those pesticides have been banned by the Environmental Protection Agency and are no longer distributed for use.

Amendments to §7.25(a) delete language that is no longer applicable due to the more stringent federal worker protection standard (WPS) rule and adds new language that makes it very clear that agricultural establishments must follow all label directions for reentry, personal protective equipment, employee notification of applications where appropriate, and other WPS requirements. Old subsection (b) is deleted and replaced with WPS card verification requirements from §7.35. Subsection (c) is deleted as it addresses §7.27 and §7.30, which have been repealed. This subsection is replaced with language dealing with the flag/sign to be used in providing prior notification under §7.26 and posting under the WPS rule. All definitions are deleted from §7.25, and those that are still applicable have been moved to §7.1.

The amendments to §7.26 at (c)(3) delete language relating to the filing of a physician's verification to support a request based on a medical condition. That language has been moved to subsection (d). Subsection (d) has also been changed to add that the person requesting prior notification must notify the farmer that they are requesting prior notification due to medical condition in order to receive notification pursuant to subsection (g)(2). Subsection (f) has been deleted to no longer require the department to approve a request based on a medical condition. Subsection (g)(2) is changed to continue the same system of notification for persons requesting prior notification due to a medical condition. Subsection (i) is changed to provide that notice must be given on the day before a scheduled pesticide application but emergency provisions still remain in place. New §7.27 provides forbidden pesticide practices. New §7.28 provides requirements for the use of the Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar. New §7.29 provides requirements for the use of M-44 Sodium Cyanide devices. New §7.30 provides requirements for supervision of unlicensed applicators. The amendments to §7.36 change the expiration date for Chapter 7 from August 31, 1996 to August 31, 2000. This will set a date in the future by which the department shall review and amend, repeal or reactivate sections in Chapter 7. Sections 7.2, 7.4-7.7 and 7.21 have not been amended or repealed by the department and the department hereby reactivates those sections.

Comments generally in favor of the proposal were received from the Texas Ag Industries Association and the Texas Farm Bureau. The Texas Association of Nurserymen also submitted comments regarding the size of the sign to be posted in nursery and greenhouse operations. Changes to §7.25(d) were made based on this comment. Comments received other than those previously addressed relate to the increase in the fee for registration of a pesticide. The commenter questioned whether or not fees collected for pesticide programs are being used to cover costs of those programs and whether the department

examined fees of other programs to determine if they should be raised to cover activities associated with those programs. The department was required by the legislature to review its fees and determine what increases were necessary in all regulatory programs to recover costs. That review resulted in the conclusion that the registration fee should be increased to cover costs associated with the registration program.

The amendments and new sections are adopted under the Act, §76.004, which provides the Texas Department of Agriculture with the authority to regulate the use of pesticides and provides the department with the authority to adopt rules for carrying out the provisions of Chapter 76; the Act, §76.044, which provides the department with the authority to set and charge a fee for each pesticide registered with it; the Act, §76.073, which provides the department with the authority to fix and charge a fee for a dealer license; the Act, §§76.106, 76.108, and 76.112, which provide the department with the authority to fix and collect a fee for applicator testing and licensing of commercial and private applicators.

#### *§7.1. Definitions.*

In addition to the definitions set out in the Act, §76.001, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Act-Texas Pesticide Control Act, codified at Texas Agriculture Code, Chapter 76.

Adjoining -Directly contiguous to a field on which pesticides may be applied or which is separated from a field only by a road, railway, or utility right-of-way, or by a government-owned land corridor or waterway having a width of not more than 100 feet.

Farm labor camp-Housing used by one or more seasonal, temporary, permanent, or migrant workers and accompanying dependents which are owned, operated, or managed by the farm operator or licensed by the State of Texas.

Farm operator-The person responsible for the overall control and management of the crop. Responsibility for the overall control and management of the crop may be transferred by contract to a second party. However, if the effective date of the transfer of responsibility is unclear, both the farm operator and the second party may be held liable for any violation of these regulations.

Person-Includes any individual, partnership, association, corporation, and any organized group of persons, whether incorporated or not.

Extension-Texas Agricultural Extension Service.

#### *§7.16 Applicator Recertification.*

(a) All applicators must meet recertification requirements through continuing education activities.

(b) Continuing education activities may include lectures, panel discussions, organized video or film with live instruction, field demonstrations, or other activities approved by the department.

(c) Each activity must be accredited by the department. No activity may claim to be approved, accredited, or accepted by the department or use any other such term that would lead an applicator to believe that it has been approved by the department for recertification unless it is so accredited.

(d) The department shall assign no more than one continuing education credit unit for each hour of net actual instruction time for an accredited activity.

(e) To be eligible for accreditation, the department will require:

(1) that the activity have significant educational or practical content to maintain appropriate levels of competency;

(2) that the activity be conducted by a university, a governmental agency, an association with membership of 25 or more persons, or a private independent nonapplicator business;

(3) that each activity has a recordkeeping procedure for verifying applicator attendance using department forms or approved formats;

(4) that each activity be at least one hour of net instruction time;

(5) that activities cover one or more of the following topics pertaining to pesticides:

(A) label and labeling comprehension;

(B) safety factors;

(C) environmental consequences;

(D) pest features;

(E) integrated pest management strategies/pest management practices;

(F) pesticide factors;

(G) equipment characteristics;

(H) application techniques/drift minimization;

(I) laws and regulations; or

(J) business ethics; and

(6) the activity is able to comply with any applicable federal and state laws, including the Americans With Disabilities Act (ADA) requirements for access to activities.

(f) Prior accreditation shall not be required for applicator recertification courses of up to three continuing education credit units conducted by Extension faculty, department pesticide program staff and pesticide inspectors for any pesticide applicator, provided that all other requirements for course content and records are met. The department may enter into a memorandum of agreement with Extension regarding the specific requirements for applicator recertification.

(g) Department personnel may monitor all accredited activities, and all fees charged by the sponsor shall be waived for department personnel who monitor the recertification activity.

(h) The department may deny, revoke, or refuse to renew accreditation for any or all courses of a sponsor if the sponsor fails to file a timely activity report, fails to provide the quality of activity approved by the department, or fails to comply with any other requirements that are a basis for accreditation or that are a part of these rules.

(i) The department may enter into a memorandum of agreement with another state or non-profit professional society or associa-

tion to recognize the state's pesticide applicator recertification or the society's professional recertification for satisfaction of the requirements of this section for commercial, noncommercial and private applicator recertification only if:

(1) the standards for recertification meet or exceed the standards for the one-year or five-year recertification periods as set out in this section; and

(2) the agreement reduces duplication of effort and does not increase the recordkeeping burden of the department.

(j) Each continuing education activity shall be accredited for one calendar year only.

(k) In order for a recertification activity to be accredited by the department, the sponsor must:

(1) submit a completed department-prepared application form;

(2) provide any additional material relevant to the activity which is requested by the department; and

(3) submit the application and information required by the department at least 30 days in advance of the first date of the activity. The department may waive the 30-day provision providing all other requirements are met. The department will respond to the sponsor within ten days of receipt of the application and approve, reject, or request additional information.

(l) Sponsors who wish to continue accreditation must file for renewal annually on a form prepared by the department.

(m) Sponsors of accredited activities shall:

(1) prepare a roster of applicators that attend the activity which contains, at a minimum, the pesticide applicator's name and current license or certificate number.

(2) distribute a completion certificate at the time of the activity to applicators who successfully complete an activity, which shall indicate the name of the sponsor, the date, county and name of the activity, the amount and type of credit earned, and the assigned course number;

(3) send the activity rosters to the department within 14 days after the end of an activity. The rosters must be on department forms or approved formats; and

(4) ensure that each continuing education unit accredited be at least one hour of net instruction time.

(n) Governmental agencies may enter into an agreement with the department for annual submission of recertification records of agency employees attending a recertification program approved for the agency by the department.

(o) No credit will be given for time used to promote the sponsor or other activities of the sponsor or for time used for organizations, political, procedural, or other nonrelevant activities.

(p) Applicators will recertify through a self-certification program. Each applicator will be required to maintain the number of credits necessary to renew a license or certificate. Certificates of completion received from accredited activities must be maintained for a period of 12 months after the most recent renewal of their license or certificate.

(q) Each licensed commercial or noncommercial applicator must obtain five hours of CEUs annually. A minimum of one hour must be obtained from two of the following categories: integrated pest management, laws and regulations or drift minimization.

(r) Each commercial or noncommercial applicator must obtain at least five credits during the 12 months preceeding December 31 in order to recertify and renew a license for the following year. An applicator who becomes unlicensed in any licensing year may not be relicensed for 12 months unless all recertification credits required for the last year of licensing are completed. Until the 12 month period has elapsed, applicators are prohibited from retesting under §7.11 of this title (relating to Classification of Commercial and Noncommercial Licenses).

(s) Private applicators must recertify as follows.

(1) Each licensed private applicator must obtain 15 continuing education credits within a five year period including at least two credits in laws and regulations and two credits in integrated pest management, except that any private applicator with a recertification date that began prior to January 1, 1996, must obtain two credits in laws and regulations and one credit in integrated pest management.

(2) Each licensed private applicator must obtain 15 credits prior to February 28 of the year their license expires.

(3) Private applicators issued a certificate prior to January 10, 1989, may fulfill their recertification requirement on a one-time only basis by completing the Extension private applicator training program, attaining a passing score on the private applicator test, and obtaining a private applicator license. Certified private applicators who choose not to license but wish to maintain certification under a certificate issued prior to January 10, 1989, will be required to recertify as specified for licensed private applicators in this subsection

(4) Private applicators may have the option of foregoing continuing education requirements for a recertification period by following these procedures:

(A) Take and pass a comprehensive examination administered by the department which will contain questions relevant to those topics which would be covered at various continuing education activities. A certificate of completion worth 15 continuing education units will be issued by the department upon a passing score being attained by the applicator.

(B) If the applicator fails the examination, subsequent attempts will be allowed until a passing score is attained. If a passing score is not attained, the applicator must obtain the required continuing education units pursuant to this subsection.

(C) A fee of \$50 is required prior to each examination.

(t) Failure to comply with the continuing education requirement for commercial, noncommercial and private applicators will:

(1) result in nonrenewal of an applicator's license or certification until the necessary credits for continuing education are attained;

(2) require the applicator to take and pass comprehensive department examinations for general knowledge and for each category in which the applicator seeks to be licensed if the applicator does not recertify and renew in one year following the expiration of the license;

(3) require retraining of commercial, noncommercial and private applicators for categories or subcategories requiring special training if the applicator does not recertify and renew in one year following the expiration of the license; and

(4) subject a noncompliant applicator to administrative, civil or criminal penalties and/or license or certificate revocation, suspension, modification or probation for failure to comply with continuing education requirements or if the applicator operates under a license that has not been renewed.

(u) An applicator may seek credit for a continuing education activity that has not been submitted by the sponsor to the department, and the department will assign the number of credits for the activity when the activity is held by an out-of-state sponsor and the following applies:

(1) the activity contains course content of the highest standards;

(2) the activity is sponsored by an institution of higher education, a regional association, a national association, or the state or federal government;

(3) the applicator provides the department with sufficient information describing activity content including the time allotted to each aspect of the activity, identification of sponsor, instructor's name and address, proof of attendance, date, time, and place of the activity; and

(4) this information is submitted within 60 days after completion of the activity; or

(5) the activity is a course approved by a university, college, or other institution of higher education for credit towards a bachelors degree, and is an area directly related to the activities of commercial or noncommercial applicators, and the following applies:

(A) the applicator provides the department with sufficient information describing activity content including the time allotted to each aspect of the activity, identification of sponsor, instructor's name and address, proof of attendance, date, time, and place of activity; and

(B) this information is submitted within 60 days after completion of the activity.

(v) An applicator may file a written request for an extension of time for compliance with any deadline in these rules. Such request for extension shall be granted by the department if the applicator files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause means extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the person seeking the extension.

(w) Any person who is issued an initial license on or after September 1 in any year and has not been licensed at any time during the preceding nine months, shall begin annual recertification requirements the following year and need not obtain any credits between September 1 and December 31 of that year. If credits are obtained during that period, they may be applied to the following year's requirement.

(x) Applicators licensed as both private and commercial or noncommercial may satisfy requirements for private applicator recer-

tification by meeting the recertification requirements for commercial and noncommercial applicators.

#### *§7.25. Scope of Pesticide Application Standards.*

(a) Purpose. The purpose of §§7.25-7.27 of this title (relating to Pesticides) is to establish pesticide application standards designed to prevent unreasonable risk to human health and protect workers and others during the production of agricultural field crops.

(b) Worker Protection Standard Training Verification Requirements. All certified and licensed applicators or trained trainers who conduct pesticide safety training must:

(1) maintain records of each trainee for five years. These records must include a copy of each dated class roster signed by the trainer and each trainee, with the verification card number issued to the trainee, and the city or county and state where the training occurred;

(2) issue EPA training verification cards only to trainees who have been trained in accordance with the requirements of the WPS, including the correct use of training materials developed or approved by EPA;

(3) record trainee information on the verification cards, in ink or other indelible form;

(4) issue EPA training verification cards that match EPA specifications or that comply with state variations from such specifications that have prior approval from EPA; and

(5) promptly respond to requests from EPA, state, or tribal agencies or agricultural employers for information concerning issued EPA training verification cards.

(c) The EPA WPS warning flag/sign. EPA WPS warning flag/sign referred to in WPS and §7.26 of this title (relating to Notification Requirements) must look like the one pictured as follows. Additional information may be included on the warning sign, such as the name of the pesticide or the date of application, if it does not lessen the impact of the flag/sign or change the meaning of the required information. If the required information is added in other languages, the words must be translated correctly. The flag/sign must be at least 14 inches by 16 inches, and the letters must be at least one inch high. For nursery and green house operations, the warning sign/flag may meet the minimum requirements as approved by the EPA. Figure 1: 4 TAC §7.25(c)

#### *§7.26. Notification Requirements.*

(a) Responsibility. Except as provided in subsection (n) of this section, the farm operator shall be responsible for meeting prior notification requirements.

(b) (No change.)

(c) Who may request. The following persons may request prior notification of a pesticide application:

(1) any person who works or resides in a building, house, or other structure located on land adjoining and within 1/4 mile of a field on which pesticides may be applied;

(2) persons in charge of licensed day-care centers, primary and secondary schools, hospitals, inpatient clinics or nursing homes within 1/4 mile of the field on which pesticides are to be applied. The parent of a primary or secondary school student may for good cause request notification from the department if the person

in charge of the school has refused to request notification. If the department determines that notification should be given, the department shall notify the farm operator to give notification to the person in charge of the school ; and,

(3) any person with chemical hypersensitivities, allergies, or other medical conditions which may be aggravated by pesticide exposure and whose residence or place of employment is within 1/4 mile of the field on which pesticides are to be applied.

(d) Content of request. Except as provided in subsection (n) of this section, requests for prior notification under this section shall be made in writing to the farm operator, and should include:

(1)-(4) (No change.)

(5) a request to be notified prior to the application of any pesticides to the area described in paragraph (4) of this subsection or the trade name and/or common chemical name of specific pesticides for which prior notification is requested and;

(6) a request to be notified because of a medical condition that may be aggravated by pesticide exposure. Such requests must contain a licensed physician's signed confirmation of the medical condition.

(e) (No change.)

(f) Length of effectiveness and commencement of notification. A request for prior notification shall be effective through December 31 of the year that the request is received. A farm operator shall commence notifying a requesting party of scheduled pesticide applications within ten days of receipt of a request for notification. The department may extend the time to begin notifying a requesting party upon a showing of sufficient cause by the farm operator. The department shall notify the requesting party of any such extension.

(g) Notification. The following methods may be used for giving notification of a scheduled pesticide application.

(1) General requests. Except as provided by subsection (n) of this section if the request for notification is made pursuant to this section, the notification may be made by:

(A) raising a flag/sign.

(i) the EPA WPS posted warning flag/sign shall be raised to a height of at least approximately five feet, with the bottom of such flag/sign always at least two feet above the top of the crop, in or about the field to which pesticides are scheduled to be applied so that the flag/sign is located no farther than 650 yards from the nearest property line of any person requesting notification.

(ii) in the event of unusually tall crops, such as citrus, corn, or sugar cane, or limited access fields, the farm operator may raise a flag/sign at a distance greater than 650 yards from the nearest property line of the party requesting notification on a permanent pole to a height visible from the property line of the requesting party.

(iii) (No change.)

(B)-(C) (No change.)

(2) Medical condition. If the request for notification is made pursuant to a medical condition, notification must be given in person or by telephone in English or, when appropriate, Spanish.

(A) If the farm operator is unable to reach a person entitled to notification under this paragraph after making reasonable efforts, the farm operator may immediately notify the department by telephone of the following information:

(i)-(v) (No change.)

(B) (No change.)

(C) If the farm operator telephones the department between 8:00 a.m. and 5:00 p.m., Monday through Friday, the department shall immediately attempt to telephone the requesting party and give notification of the scheduled application. A record showing the date and time of all such attempts shall be maintained by the department.

(3)-(5) (No change.)

(h) Content of notice. Notice given in writing, in person, or by telephone shall include:

(1)-(3) (No change.)

(i) Time and receipt of notice. Notice shall be given not later than on the day prior to a scheduled pesticide application.

(1) Notice shall be deemed given pursuant to subsection (g) (1) and (3) of this section:

(A)-(B) (No change.)

(C) as mutually agreed upon pursuant to an agreement authorized by subsection (g) (1)(C).

(2) Notice shall be deemed given pursuant to subsection (g) (4) of this section at the time of delivery of notification in person, by telephone, or by posting the required notice:

(A) (No change.)

(B) after the farm operator has made reasonable efforts to notify the requesting party by telephoning the requesting party at the number(s) provided during the time(s) specified in the written request.

(j) Emergency. Advance notice need not be given on the day before when an immediate application is required and time does not reasonably allow the giving of notice on the day before a pesticide application. Notice of an emergency application shall be given:

(1) by the method selected pursuant to subsections (g) (1), (3) and (4) of this section as soon as reasonably possible before the application; or

(2) (No change.)

(k) Removal of flags/signs. Flags/signs raised under this section should be removed or lowered within 24 hours after the reentry interval expires. However, in no event shall such flags/signs be left posted for more than 72 hours after the reentry interval has expired. In the event that a pesticide application is not made when scheduled, the flag/sign may be left posted until after the reentry interval has expired.

(l) Duty to notify of address change. A person who has requested notice of a pesticide application under this section shall notify the farm operator promptly and in writing of any change of address or telephone number. Notice need not be given at any vacant structure or premises, or at any structure or premises which is not

the place of residence or business of a person entitled to notice under this section.

(m) All complaints filed under this section shall be reviewed and investigated by the department in the same manner as any other complaints filed under the Texas Administrative Procedure Act.

(n) Applications by the Texas Boll Weevil Eradication Foundation or other areawide pest control program sponsored by a governmental entity.

(1) Responsibility. For applications made by the foundation as part of its boll weevil eradication program or other areawide pest control program sponsored by a governmental entity, the entity making the application or causing the application to be made is responsible for meeting prior notification requirements of this subsection. The farm operator is responsible for accepting requests for and providing prior notification in accordance with this section for applications made by the farm operator.

(2) Who may request. A request for notification of an application made by an entity covered by this subsection may be made by all of those persons listed in subsection (c) of this section. No request is necessary for prior notification of farm labor camps owned, managed or controlled by a farm operator and located on or within 1/4 mile of a field on which pesticides are to be applied by the foundation or other entity; provided that the farm operator is responsible for notifying the foundation or other entity of the presence of such labor camps.

(3) Filing and content of request. Requests made under this section shall be made in writing to the foundation or other entity or the farm operator and shall include all of the information required by subsection (d) of this section.

(4) Notification by farm operator. The farm operator is responsible for notifying the foundation or other entity covered by this subsection of any requests for prior notification received by the farm operator relating to an application that will be made or caused to be made by the foundation or other entity. The information must be provided to the foundation or other entity within 24 hours of its receipt by the farm operator. The information may be provided:

(A) by telephone at a telephone number obtained from the department;

(B) by forwarding the written request to the foundation or other entity in the U. S. mail at a mailing address obtained from the department; or

(C) by any other reasonable means, as long as the information is forwarded within 24 hours of its receipt.

(5) Request for notification by the foundation or other entity. Prior to the making of the first application in each calendar year, the foundation or other entity shall request that the farm operator notify it of any requests for prior notification already in effect for property on which the foundation or other entity will be making applications and of any future requests for prior notification on that property.

(6) Effective date and length of effectiveness of request. A request for prior notification under this subsection shall be in effect through December 31 of the year that the request is received. The foundation or other entity shall begin notifying the requesting party

of scheduled pesticide applications within 10 days of receipt of a request for notification.

(7) Methods of notification and content of notice.

(A) Notification shall be provided as follows.

(i) Notification may be given in writing, by raising a flag/sign in the manner provided at (g)(1)(A) of this section, in person, by telephone in English or, when appropriate, Spanish, or by other means mutually agreed upon by the requesting party and the foundation or other entity. This agreement must be in writing and a copy filed with the department. For purposes of providing notice to medically affected persons or to licensed day care centers, primary and secondary schools, hospitals, inpatient clinics and nursing homes, "notification in writing" means other than by mail such as by posting a written notice on the requester's front door or at the requester's place of business.

(ii) If the foundation or other entity is unable to reach a person entitled to notification under this section after making reasonable efforts, the foundation or other entity may immediately notify the department by telephone of the following information:

(I) the name and telephone number(s) of the foundation or other entity;

(II) the name and telephone number(s) of the requesting party;

(III) the location of the field scheduled to be treated;

(IV) the intended date and approximate time of the pesticide application; and

(V) the trade and common chemical name of the pesticide.

(iii) The department shall maintain a record of the information provided by the foundation or other entity.

(iv) If the foundation or other entity telephones the department between 8:00 a.m. and 5:00 p.m., Monday-Friday, the department shall immediately attempt to telephone the requesting party and give notification of the scheduled application. A record showing the date and time of all such attempt shall be maintained by the department.

(v) In addition to the methods of notification provided at this subparagraph, notification to farm labor camps may be provided in writing by placing a written notice on an on-site bulletin board or other central, on-site posting place which is readily accessible to labor camp residents.

(B) The notice shall include:

(i) the location of the field on which the application is to be made;

(ii) the intended date and approximate time of application;

(iii) the trade and common chemical name of the pesticide to be applied; and

(iv) who to contact for additional information.

(C) Notice shall be given no later than the day prior to a scheduled pesticide application.



(8) Emergency provision. Advance notice need not be given on the day before an application when an immediate application is required and time does not reasonably allow the giving of notice on the day before the pesticide application. Notice of an emergency application shall be given:

(A) by the method selected in accordance with paragraph (7)(A) of this subsection as soon as reasonably possible before the application; or

(B) by telephone or in person to a medically-affected person as soon as reasonably possible, but not less than one hour before the application. However, an emergency application need not be postponed if after reasonable efforts by the foundation or other entity actual notice cannot be given.

(9) Duty to notify of address change. A person who has requested notice of a pesticide application under this section shall notify the foundation or other entity promptly and in writing of any change of address or telephone number.

*§7.29. M-44 Sodium Cyanide-State-Limited-Use Requirements.*

(a) Purpose. Any and all pesticides and devices using sodium cyanide as the active ingredient, including the M-44 device for livestock predation control, shall be classified as state-limited-use pesticides, pursuant to the Act, §76.003. However, this section shall not apply to the use of M-44 sodium cyanide by employees of the Texas Animal Damage Control Service when performing official duties and using M-44 cyanide capsules under the federal government registration.

(b) Definitions. In addition to the definitions set out in the Act, §76.001 and §7.1 of this title (relating to Definitions), the following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) Authorized dealer - A dealer licensed under the Act, §76.071, and specifically approved by the department to distribute M-44 sodium cyanide.

(2) M-44 applicator - A person who has obtained authorization from the department for the use of M-44 sodium cyanide.

(3) M-44 sodium cyanide - Includes the active ingredient sodium cyanide, sodium cyanide capsules, and any device loaded with sodium cyanide for use in livestock predation control.

(c) Distribution requirements. Dealers distributing M-44 sodium cyanide must meet the following requirements.

(1) All dealers who wish to distribute M-44 sodium cyanide must obtain written approval by the department. In order to obtain approval to handle M-44 sodium cyanide from the department, dealers must obtain from the department a pesticide dealer's license to handle restricted pesticides and complete special agreement forms to become an authorized dealer for the purpose of distributing M-44 sodium cyanide. All dealers must meet the dealer requirements of the Act, §§76.071-76.077, the requirements of §7.8 of this title (relating to Authorized Pesticide Users and Pesticide Dealers), and any additional federal requirements of the use restriction bulletin (label) for M-44 sodium cyanide under EPA Registration Number 33858-2.

(2) An authorized dealer may distribute M-44 sodium cyanide only to M-44 applicators or registrants of M-44 sodium cyanide. M-44 sodium cyanide may not be distributed or transferred

by a dealer to any person for the purpose of resale or transfer with the exception of registrants.

(3) The department will keep a list of approved dealers and make it available to all certified applicators. Only dealers whose names appear on the list are authorized to receive or distribute M-44 sodium cyanide.

(4) Each authorized dealer must be or employ a person certified under this section.

(5) Each dealer must maintain for a period of two years complete records on forms prescribed by the department of all transactions involving M-44 sodium cyanide, including:

(A) the amount of materials purchased by dealer and date of purchase;

(B) the following information for each distribution:

(i) the date of distribution;

(ii) the name, address, applicator number, county, and telephone number of any M-44 applicator to whom M-44 sodium cyanide was distributed; and

(iii) the amount distributed to the approved applicator.

(6) Dealers must make sure that any distribution of M-44 sodium cyanide is accompanied by a complete label. Authorized dealers must also provide to M-44 applicators the recordkeeping forms prescribed by the department. Authorized dealers may distribute sodium cyanide capsules only in boxes of ten each, in boxes of 25 each, or in boxes of 50 each.

(7) Authorized dealers must obtain the department's approval prior to purchasing any M-44 sodium cyanide.

(8) Each authorized dealer must report to the department any incident or complaint of misuse involving M-44 sodium cyanide.

(d) M-44 applicators. Any person seeking to qualify as an M-44 applicator must possess a current private applicator certification or license, or a noncommercial applicator license with certification in the predatory animal control subcategory, regulatory pest control category or demonstration and research category, or a commercial applicator license with certification in the predatory animal control subcategory. All applicators must undertake training prescribed by the department and obtain certification for M-44 use.

(1) Training for M-44 applicators will include the following:

(A) the proper use and treatment of the M-44 sodium cyanide;

(B) the proper method of disposing of M-44 sodium cyanide and related contaminated materials;

(C) safe handling techniques designed to reduce health and injury risks;

(D) recordkeeping requirements;

(E) proper methods of identifying causes of predation; and

(F) approved methods of predator control.

(2) All M-44 applicators must comply with the label including the use restrictions bulletin on M-44 sodium cyanide issued by the department (EPA Registration Number 33858-2) when using M-44 sodium cyanide. Copies of the use restrictions must be obtained with the purchase of each box of M-44 sodium cyanide. Additional copies of the bulletin and recordkeeping forms may be obtained from the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(e) Recordkeeping. Each applicator shall maintain records on forms prescribed by the department dealing with the placement of the device and the results of each placement. Such records shall include, but may not be limited to:

- (1) the number of M-44 sodium cyanide devices in place;
- (2) the location of each M-44 sodium cyanide device;
- (3) the dates of each placement, inspection, and removal;
- (4) the number and location of M-44 sodium cyanide devices which have been discharged and the apparent reason;
- (5) species of animals taken; and
- (6) all accidents or injuries involving humans, domestic animals, wildlife, or bodies of water.

Issued in Austin, Texas, on August 27, 1996.

TRD-9612529

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: September 17, 1996

Proposal publication date: July 12, 1996

For further information, please call: (512) 463-7583

#### 4 TAC §§7.10-7.16, 7.27-7.35

The Texas Department of Agriculture (the department) adopts the repeal of §§7.10-7.16 and 7.27-7.35, concerning pesticide regulation, without changes to the proposed text as published in the July 12, 1996, issue of the *Texas Register* (21TexReg 6331).

The repeal is adopted to allow the department to revise and reorganize Chapter 7 to make the chapter consistent with federal law and changes made by the 74th Texas Legislature (1995), update citations, update terminology and clarify the regulations.. The repeal of §§7.10-7.16 deletes sections relating to applicator certification and recertification, classification of applicator licenses, requirements for applicator licenses, prohibited pesticide practices, livestock protection collar requirements, M- 44 sodium cyanide requirements, and supervision requirements to allow for those sections to be relocated elsewhere in Chapter 7 and replaced with new sections. The repeal of §§7.27, 7.28, and 7.30 make the department's regulations consistent with current federal law and regulations

Comments generally in support of the repeal were submitted by the Texas Ag Industries Association and the Texas Farm Bureau.

The repeal is adopted under the Texas Agriculture Code, §76.004, which provides the Texas Department of Agriculture

with the authority to regulate the use of pesticides and provides the department with the authority to adopt rules for carrying out the provisions of Chapter 76.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 27, 1996.

TRD-9612530

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: September 17, 1996

Proposal publication date: July 12, 1996

For further information, please call: (512) 463-7583

## TITLE 10. COMMUNITY DEVELOPMENT

### Part V. Texas Department of Commerce

#### Chapter 198. Advertising Rules

##### 10 TAC §§198.1-198.12

The Texas Department of Commerce (Commerce) adopts new §§198.1-198.12, concerning advertising rules relating to the sale of advertising space by Commerce in travel promotions of any media. The new rules are adopted without changes to the proposed text as published in the May 21, 1996, issue of the *Texas Register* (21 TexReg 4385).

The new rules include provisions governing the cost of advertising space, the size of advertisements, acceptable and unacceptable products and services for advertisement, advertising placement and sales procedures, approval of advertising copy, liability policy, payment policy, tearsheet policy and policy on refusal to do business with certain individuals and entities.

No comments requesting changes to the proposed rules were received.

The new rules are adopted under the authority of Government Code, §481.174 and §481.005(d).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 28, 1996.

TRD-9612552

W. Lane Lanford

Chief Administrative Officer

Texas Department of Commerce

Effective date: September 18, 1996

Proposal publication date: May 21, 1996

For further information, please call: (512) 936-0178

## TITLE 22. EXAMINING BOARDS

## Part XII. Board of Vocational Nurse Examiners

### Chapter 231. Administration

#### General Provisions

##### 22 TAC §231.1

The Board of Vocational Nurse Examiners adopts an amendment to §231.1, relative to the definition of Direct Supervision without changes to the proposed text published in the April 12, 1996, issue of the *Texas Register* (21 TexReg 3113).

The rule is amended to promote client safety by providing an unequivocal definition of the supervision needed by a vocational nurse with a temporary permit.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(h), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 27, 1996.

TRD-9612522

Marjorie A. Bronk, R.N.

Executive Director

Board of Vocational Nurse Examiners

Effective date: September 17, 1996

Proposal publication date: April 12, 1996

For further information, please call: (512) 305-8100

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### Chapter 235. Licensing

#### Application for Licensure

##### 22 TAC §235.17

The Board of Vocational Nurse Examiners adopts an amendment to §235.17, relative to Temporary Permits without changes to the proposed text as published in the April 26, 1996, issue of the *Texas Register* (21 TexReg 3594).

The rule is amended to clarify the differences between the conditions of issuance of temporary permits to individuals who meet licensure requirements from the conditions of issuance of temporary permits to individuals who do not meet licensure requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(h), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 27, 1996.

TRD-9612521

Marjorie A. Bronk, R.N.

Executive Director

Board of Vocational Nurse Examiners

Effective date: September 17, 1996

Proposal publication date: April 26, 1996

For further information, please call: (512) 305-8100

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# TABLES AND GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as “Figure 1” followed by the TAC citation,

Figure 1:4 TAC §7.25(c)



TEXAS STATE BOARD OF PHYSICIAN ASSISTANT EXAMINERS  
P.O. Box 2018, MC-263  
Austin, Texas 78768-2018  
[P.O. Box 149134  
Austin, Texas 78714-9134]

PROFESSIONAL LIABILITY CLAIMS REPORT

FILE ONE REPORT FOR EACH DEFENDANT PHYSICIAN ASSISTANT

PART I COMPLETE FOR ALL CLAIMS OR COMPLAINTS AND FILE WITH THE TEXAS STATE BOARD OF PHYSICIAN ASSISTANT EXAMINERS WITHIN 30 DAYS FROM RECEIPT OF COMPLAINT OR CLAIM. INCLUDE COPY OF CLAIM LETTER AND/OR PLAINTIFF'S COMPLAINT.

1. Name and address of insurer:

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2. Defendant physician assistant:

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License number: \_\_\_\_\_

3. Plaintiff's name:

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4. Policy number:

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5. Date claim reported to insurer/self-insured physician assistant:

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6. Type of complaint: \_\_\_\_\_ claim only \_\_\_\_\_ lawsuit

7. Initial reserve amount after investigation:

\_\_\_\_\_  
(If this is not determined within 30 days, report this data within 105 days of filing the Part I report with the board)

\_\_\_\_\_  
Person completing this report (SIGNATURE)

\_\_\_\_\_  
Person completing this report (PRINT NAME)

\_\_\_\_\_  
Phone number

**PART II** COMPLETE AFTER DISPOSITION OF THE CLAIM AS DEFINED IN 22 T.A.C., INCLUDING DISMISSALS OR SETTLEMENTS. FILE WITH THE TEXAS STATE BOARD OF PHYSICIAN ASSISTANT EXAMINERS WITHIN 105 DAYS AFTER DISPOSITION OF THE CLAIM. A COPY OF A COURT ORDER OR SETTLEMENT AGREEMENT MAY BE USED AS PROVIDED IN 22 T.A.C.

8. Date of disposition: \_\_\_\_\_

9. Type of Disposition:

\_\_\_\_\_ (1) Settlement

\_\_\_\_\_ (2) Judgment after trial

\_\_\_\_\_ (3) Other (please specify)

\_\_\_\_\_

10. Amount of indemnity agreed upon or ordered on behalf of this defendant:

\$ \_\_\_\_\_. Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (Example: \$100,000/3)

11. Appeal, if known: \_\_\_\_ Yes \_\_\_\_ No. If yes, which party:

\_\_\_\_\_

\_\_\_\_\_  
Person completing this report (SIGNATURE)

\_\_\_\_\_  
Person completing this report (PRINT NAME)

\_\_\_\_\_  
Phone number

# OPEN MEETINGS

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Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

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## **State Office of Administrative Hearings**

Tuesday, September 17, 1996, 9:00 a.m.

1400 North Congress Avenue, Texas Capitol Extension, E-1.012

Austin

Utility Division

### **AGENDA:**

A Hearing on the Merits will be held at the above date and time in SOAH Docket No. 473-96-1519-Inquiry of the Public Utility Commission of Texas Under Section 2.056 of PURA relating to transmission service provided by the Texas Municipal Power Agency and the City of Bryan to the City of College Station (PUC Docket No. 15296).

Contact: J. Kay Trostle, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

Filed: August 30, 1996, 9:01 a.m.

TRD-9612689



## **Texas Department of Agriculture**

Monday, September 9, 1996, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress, Room 911

Austin

Agriculture Resources Protection Authority

### **AGENDA:**

Approval of Minutes of June 3, 1996 meeting; Discussion and Action on: Legislative Directive Relating to Review of Pesticide Enforcement Penalties, Proposed Reporting Rules, Texas Boll Weevil Eradication Foundation Program, Agencies Legislative Appropriations Requests; Report on Status of State Management Plan; Discussion of House Resolution 1627; Public Comment Session on State's Pesticide Regulation Efforts; Citizen's Communication.

Contact: Donnie Dippel, P.O. Box 12847, Austin, Texas 7871, (512) 475-1621.

Filed: August 29, 1996, 3:39 p.m.

TRD-9612668



## **Texas Commission on Alcohol and Drug Abuse (TCADA)**

Tuesday, September 10, 10:00 a.m.

201 North Main, Room 104, Andrews County Courthouse

Andrews

Regional Advisory Consortium (RAC), Region 9

### **AGENDA:**

Call to order, public comment; comments; convener and field representative; RAC membership resignation; approval of July 23, 1996 minutes; RAC membership/recruitment; nomination/selection of officers; goal 3/4 committee's scheduling of next meeting and adjournment.

Contact: Joe Salas, 1200 Golden Key Circle, 4th Floor, El Paso, TX 79925, (915) 783-8600.

Filed: August 29, 1996, 11:09 a.m.

TRD-9612635



Thursday, September 12, 1:30 p.m.

6451 Boeing, Conference Room, Texas Department of Human Services

El Paso

Regional Advisory Consortium (RAC), Region 10

### **AGENDA:**

Call to order, public comment; comments; convener and field representative; approval of June 20, 1996 minutes; RAC membership/

recruitment; nomination/selection of officers; goal 3/4 committee's; scheduling of next meeting and adjournment.

Contact: Joe Salas, 1200 Golden Key Circle, 4th Floor, El Paso, TX 79925, (915) 783-8600.

Filed: August 30, 1996, 8:17 a.m.

TRD-9612681



### **Coastal Coordination Council (CCC)**

Friday, September 6, 1996, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 119

Austin

Executive Committee

AGENDA:

I. Call to order.

II. Small Business Permitting Assistance Program rules.

III. Adjourn.

Contact: Janet Fatheree, 1700 North Congress Avenue, Room 617, Austin, Texas 78701, (512) 463-5385.

Filed: August 29, 1996, 8:54 a.m.

TRD-9612586



### **Comptroller of Public Accounts**

Thursday, September 5, 1996, 10:30 a.m.

Capitol Extension, Room E1.012

Austin

Prepaid Higher Education Tuition Board

AGENDA:

I. Call to Order

II. Roll Call

III. Approval of minutes of May 20, 1996 Board Meeting

IV. Program Update

V. Discussion and vote on selection of outside legal counsel

VI. Discussion and vote regarding adoption of proposed program rules amendments (Title 34, Part I, Chapter 7)

VII. Discussion and vote on resolution and funds management agreement authorizing the transfer of funds from the Texas tomorrow Fund to the Texas Treasury Safekeeping Trust Company

VIII. Discussion and vote on amendment to actuarial services contract

IX. Public comment

X. Set next Board meetings

XI. Adjourn

Contact: Wardaleen Belvin, 111 E. 17th Street, Room 1114, Austin, Texas 78774, (512) 463-4384.

Filed: August 28, 1996, 11:09 a.m.

TRD-9612567



Wednesday, September 25, 1996, 10:00 a.m.

111 East 17th Street, Room 114

Austin

Funds Review Advisory Committee

AGENDA:

I. Call to Order

II. Notice to State Agencies-Review of Agency responses

III. Discussion and approval of issued to be included in the report

IV. Committee Discussion of report layout and contents

V. Set next meeting date and time

VI. Adjourn

Contact: Larry Janacek, State Comptroller's Office, 111 E. 17th Street, Room 902, Austin, Texas 78774, (512) 463-3865.

Filed: August 30, 1996, 9:01 a.m.

TRD-9612690



### **Texas Funeral Service Commission**

Thursday, September 5, 1996, 10:00 a.m.

510 South Congress, Suite 206

Austin

AGENDA:

Call to Order and Roll Call; Public Comment; Approval of the minutes of the 06/06/96, 06/07/96, 06/25/96, and 07/23/96 Commission Meetings; Executive Director's Report; Chairman's Report; Reports from all committees, Discussion, and Possible Action; Discussion and possible action on a proposed amendment to 22 TAC Section 203.15 of the Commission Rules related to Texas Civil Statutes, Article 4582b, Section 3(F); Discussion and possible action on an amendment to be proposed regarding 22 TAC Section 203.30 of the Commission Rules; Discussion and possible action on petitions by six funeral homes for exemptions regarding the location of retained records as provided by 22 TAC Section 203.23(b) of the Commission Rules; Executive Session: Consider the employment, evaluation, and duties of the General Counsel, and/or hear complaints or charges against the General Counsel, pursuant to Texas Government Code, Section 551.074; Open session for further discussion and possible action involving the employment, evaluation and duties of the General Counsel and/or to hear complaints or charges against the General Counsel, pursuant to Texas Government Code, Section 551.074; Setting of next Commission Meeting and committee meetings; Adjourn.

Contact: Marc Allen Connelly, General Counsel, 510 South Congress, Suite 206, Austin, Texas 78704, (512) 479-7222.

Filed: August 28, 1996, 1:25 p.m.

TRD-9612570



## **Interagency Council for Genetic Services (IAC)**

Friday, September 13, 1996, 1:00 p.m.

Texas Department of Human Services, Public Hearing Room, First Floor Winters Complex, 701 West 51st Street

Austin

### **AGENDA:**

The Council will discuss and possibly act on: public comments; adoption of minutes of the June 13, 1996 meeting; Texas Genetics Network (TEXGENE) report (TEXGENE status; genetic laboratories in Texas; and mechanisms for reimbursement); agency activities (Texas Department of Health; Texas Department of Mental Health & Mental Retardation; Texas Department of Human Services; University of Texas System; and representative of contractors); program coordinator items (budget status); progress toward legislative mandates and members assignments (update on legislative activities; welfare reform and impact on genetic services); announcements; and next meeting date in December, 1996.

Contact: Judith Livingston, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. To request ADA accommodation, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: August 30, 1996, 10:04 a.m.

TRD-9612709

## **Texas Genetics Network (TEXGENE)**

Friday, September 13, 1996, 1:00 p.m.

Texas Department of Human Services, Public Hearing Room, First Floor Winters Complex, 701 West 51st Street

Austin

### **AGENDA:**

The committee will discuss and possibly act on: public comments; adoption of minutes of June 13, 1996 meeting; Interagency Council for Genetic Services (IAC), (report on IAC legislative activities); TEXGENE subcommittee reports (Education; Laboratory Services; Clinical Services; Ethics; Newborn Screening; and Ad Hoc Committee (Preventive Regional Initiatives for Minority and Ethnic Diseases); reports from agency representatives regarding the activities of their respective agencies or institutions (Texas Department of Health (Texas Birth Defects Monitoring Division); Texas Department of Human Services; Texas Department of Mental Health and Mental Retardation; University of Texas System; private service providers; community —based sickle cell agencies and consumers;) items for committee action (bylaws revisions); welfare reform and impact on genetic services; reimbursement issues; program coordinator items (budget status); progress toward grant objectives and member/committee assignments; and next meeting date in December, 1996.

Contact: Judith Livingston, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. To request ADA accommodation, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: August 30, 1996, 10:04 a.m.

TRD-9612708

## **Texas Department of Health**

Friday, September 6, 1996, 10:00 a.m.

Texas Animal Health Commission, Main Conference room, 2105 Kramer Lane

Austin

Texas HIV Medication Program Advisory Committee

### **AGENDA:**

The committee will discuss and possibly act on: approval of minutes; staff reports (recommendations signed by Dr. Davis R. Smith, Commissioner of Health; current budget, and current forecasts); Vancouver conference report; public comments; finalize recommendations; summarization; and set date for next meeting.

Contact: Sheral Skinner, 1100 West 49th Street, Austin, Texas, 78756 (512) 409-2510. To request ADA accommodation, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days before the meeting.

Filed: August 28, 1996, 4:26 p.m.

TRD-9612582

Thursday, September 12, 1996, 10:00 a.m.

Texas Department of Human Services, Board room, Winters Complex, 701 West 51st Street

Austin

Family Planning Advisory Council

### **AGENDA:**

The Regional Coordinating Committee Chairpersons will meet at 8:30 a.m. Thursday, September 12, 1996, at the Texas Department of Human Services, Board Room, Winters complex, 701 West 51st Street, Austin, Texas. The Family Planning Advisory Council will meet at 10:00 a.m. to discuss and possibly act on: approval of minutes of the June 13, 1996 meeting; report from the representative of the Regional Coordinating Committee Chairpersons; reorganization of associateship for Health Care Delivery; Family Planning Futures Committee report; Family Planning contract language regarding program income; Medicaid Managed Care update; Texas Integrated Enrollment System; TexMedNet; Nurse Practitioner education requirement; Family Planning promotional brochure; election of officers for fiscal year 1997; nomination process for replacement of Advisory Council members, public comments; and announcements.

Contact: Carol Pavlica, 1100 West 49th Street, Austin, Texas, 78756 (512) 458-7700. To request ADA accommodation, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days before the meeting.

Filed: August 30, 1996, 10:04 a.m.

TRD-9612707

## **Texas Department of Human Services**

Friday, September 6, 1996, 10:00 a.m.

701 West 51st Street, John Winters Building, 5th Floor, West Tower,  
Conference Room 560–W

Austin

Aged and Disabled Advisory Committee

**AGENDA:**

1. Opening Comments
2. Deputy commissioner's comments.
3. Approval of the minutes.
4. Amendments to the rules regarding the Texas Index for Level of Effort (TILE) classification system in the Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification.

**INFORMATION/TECHNICAL ITEMS:** 5. Day Activity and Health Service Administrative/Financial Errors.

6. Payment to victims of Nazi persecution.
7. Application for other benefits.
8. Requesting a resource assessment.
9. Miscellaneous policy clarifications.

**REPORTS:** Proceedings of the subcommittee on Services to Persons with Disabilities. Proceedings of the Nursing Facility Subcommittee.

10. Open discussion by members
11. Next meeting/adjournment.

Contact: Anthony Venza, P.O. Box 149030, Austin, Texas 78714–9030, (512) 438–4943.

Filed: August 28, 1996, 2:53 p.m.

TRD-9612578



Thursday, September 5, 1996, 10:00 a.m.

701 West 51st Street, 3rd Floor, Conference Room 305–E

Austin

Client Self-support Services Advisory Council

**AGENDA:**

I. Call to order. II. Approval of minutes of July 11, 1996. III. Chairman's comments. IV. Deputy commissioner comments. V. New business. A. **ACTION ITEMS:** Enhancement to the Lone Star EBT Voice Authorized Manual Voucher System in the AFDC and Food Stamp Programs. Determining pilot indicators for Welfare Reform Cases in the AFDC Program. Repeal of the McClennan County Employment and Training Demonstration Project in the Food Stamp Program. Repeal of Family Self-support Services for Refugee and Entrants in the Refugee Cash Assistance Program. B. **INFORMATION ITEMS:** Proposed improvement in the Child and Adult Care Food Program; Performance bonds as a condition of eligibility for non-governmental Day Care Home Sponsors. Deadline for submitting a late claim. Proposed improvements in the Child and Adult Care Food Program; Administrative Sanctions, Risk Analysis, Eligibility Criteria and Performance Standards for Private Nonprofit CACFP Day Care Home Sponsors, and Request for approval to implement an automated third party menu validation. Award to the Lone Star Image

System contract in the AFDC and Food Stamp Programs. VI. Next meeting/adjournment.

Contact: Toni Lemm, P.O. Box 149030, Austin, Texas 78714–9030, (512) 438–4147.

Filed: August 28, 1996, 2:53 p.m.

TRD-9612579



## **Texas Natural Resource Conservation Commission**

Thursday, September 12, 1996, 10:00 a.m.

Building A, Room 310A, TNRCC Park 35 Office Complex, 12124 North IH35

Austin

**AGENDA:**

SOAH Docket No. 582–96–1476; TNRCC Docket No. 96–1090–DIS; FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 19; for a hearing before an Administrative Law Judge of the State Office of Administrative Hearings (SOAH) on an application for authority to adopt and impose non-uniform operation and maintenance standby fees on undeveloped property in Fort Bend County Municipal Utility District No. 19 for a three-year period beginning in 1996 and ending in 1998.

Contact: District Administration Section, MC-152, P.O. Box 13087, Austin, Texas 78711–3087, (512) 239–6161.

Filed: August 28, 1996, 1:26 p.m.

TRD-9612571



Wednesday, November 20, 1996, 9:30 a.m.

Building E, Room 201S, TNRCC Park 35 Office Complex, 12118 North IH35

Austin

**AGENDA:**

Docket No. 95–1047–DIS; application by Hickory Creek Water Supply Corporation for conversion from a water supply corporation to a special utility district, and transfer of Certificate of Convenience and Necessity No. 10809 from Hickory Creek Water Supply Corporation to Hickory Creek Special Utility District. The proposed special utility district is located wholly within Collin, Fannin and Hunt Counties and within the extra-territorial jurisdiction of the cities of Greenville, Leonard, Celeste, and Wolfe City, Texas. The proposed district would contain a total approximate acreage of 100,000 acres.

Contact: District Administration Section, MC-152, P.O. Box 13087, Austin, Texas 78711–3087, (512) 239–6161.

Filed: August 28, 1996, 11:30 a.m.

TRD-9612569



## **Board of Vocational Nurse Examiners**

Monday and Tuesday, September 16 and 17, 1996, 8:00 a.m.

Hobby Building, Tower 2, Room 225, 333 Guadalupe

Austin

AGENDA:

Monday, September 16, 1996— 8:00 a.m.- Call to Order; Introduction of Board Members; Introduction of New Staff; approval of Minutes; education Report (Program Matters, Program Actions, Discussion Items, Review of BVNE response to HIV/AIDS Report, Meetings/Conferences/ Seminars attended by Education Staff); Unfinished Business (Budget Report, TPAPN, Health Professions Counsel, visions Report, Letter to UTMB, Delegate Assembly, Computer Services Cost); Executive Session for Executive Director's Evaluation; Executive Director's Report; New Business (Election of Officers, Direct Deposit for Board Members);

Monday, September 16, 1996 — 3:00 p.m. Public Hearing on Peer Review Rule 240.13

Tuesday, September 17, 1996 — 8:00 a.m. Administrative Hearings; any Unfinished Business; and Adjournment

ON CALL — Executive Session to Discuss Personnel Changes/ Matters

Contact: Marjorie A. Bronk, 333 Guadalupe Street, Suite 3-400, Austin, Texas 78701, (512) 305-8100.

Filed: August 29, 1996, 3:29 p.m.

TRD-9612667



## State Pension Review Board

Wednesday, September 11, 1996, 1:30 p.m.

William Clements Building, 5th Floor Committee Room 5, 300 West 15th Street

Austin

AGENDA:

1. Meeting Called to Order
2. Roll Call
3. Reading and adoption of Minutes of Previous Meeting
4. COMMITTEE REPORTS —
  - A. ADMINISTRATION — Chair Bruce Cox (Horwitz);
  - B. RESEARCH — Chair Larry Eddington (Deiters): 1. Meeting of Database Committee (Larry Eddington), 2. Meeting of Pension Policy and Legislation Committee (Bruce Cox);
  - C. ACTUARIAL; 1. Compliance Update;
  - D. COMMUNICATIONS — Chair Cheryl Dotson (Deiters); 1. Logo update
  - E. Legislative — Chair Gilbert Vazquez (Horwitz)
5. Presentation by Randy Stalnaker on Dallas Municipal Retirement System and possible action.
6. Presentation and Possible Action on Actuarial Study of Volunteer Fire Fighter Plans
7. Discussion and Possible Action on Old Business
8. Announcements and Invitation for Audience Participation

9. Executive Director's Report

10. Chairman's Report

11. Adjournment-Announce Schedule of Board Meetings

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736

Filed: August 29, 1996, 3:39 p.m.

TRD-9612669



## Public Utility Commission of Texas

Monday, September 9, 1996, 10:00 a.m.

7800 Shoal Creek

Austin

Legal Administration

AGENDA:

A Prehearing conference has been scheduled in Docket No. 16355-Petition of MCI Telecommunications Corporation and its Affiliates including MCIMetro Access Transmission Services, Inc., for Arbitration and Mediation Under the Federal Telecommunications Act of 1996 of Unresolved Interconnection Issues with GTE Southwest, Inc.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 29, 1996, 2:33 p.m.

TRD-9612661



Monday, September 9, 1996, 10:00 a.m.

7800 Shoal Creek

Austin

Legal Administration

AGENDA:

A Prehearing conference has been scheduled in Docket No. 16300-Petition of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and GTE Southwest, Inc. and Contel of Texas, Inc.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 28, 1996, 2:21 p.m.

TRD-9612577



Thursday and Friday, September 12 and 13, 1996, 9:00 a.m.

7800 Shoal Creek

Austin

AGENDA:

The Commission will hold a Hearing on the Merits at the above date and time in Docket Number 15840 Regional Transmission Proceeding to Establish Postage Stamp Rate Statewide Load Flow Pursuant to P.U.C. SUBST. R. 23.67.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: August 28, 1996, 4:31 p.m.

TRD-9612584

◆ ◆ ◆  
**Texas Racing Commission**

Friday, September 6, 1996, 10:00 a.m.

John H. Reagan Building, Room 101, 105 West 15th Street

Austin

**AGENDA:**

Call to Order; Roll Call; Consideration of and action on the following rules: §§303.41, 303.92, 303.93, 303.94, 303.96, 303.97, 303.102, 309.200, 309.201, 309.202, 313.25, 313.49, 319.7, 319.102, 319.111, 321.38, 321.110, 321.116, 21.204; Petition by Texas Horsemen's Partnership, LLP, for amendment to §309.199; Consideration of and possible action on the following matters; Membership in the Association of Racing Commissioners International; Contract between Lone Star Park at Grand Prairie and Texas Horsemen's Partnership, LLP; Request by Valley Racing Association to cancel 1996 live race dates; Request by Valley Racing Association for extension of time to file application for 1997 live race dates; Old & New Business; Adjourn.

Contact: Paula Chchran Carter, P.O. Box 12080, Austin, Texas 78701, (512) 833-6699.

Filed: August 29, 1996, 2:33 p.m.

TRD-9612662

◆ ◆ ◆  
**Texas Southern University**

Thursday, September 5, 1996, 2:00 p.m.

3100 Cleburne/Hannah, Room 111

Houston

**AGENDA:**

Meeting to consider: The Ratification of Appointments of Instructional Personnel, Academic Personnel Changes

Contact: Janet Light — 3100 Cleburne/Houston, Texas 77004, (713) 589-8911.

Filed: August 29, 1996, 7:10 a.m.

TRD-9612585

◆ ◆ ◆  
**Teacher Retirement System of Texas**

Tuesday, September 10, 1996, 12:00 noon

1000 Red River, Room 420E

Austin

Medical Board

**AGENDA:**

Discussion of 1) the files of members who are currently applying for disability retirement and 2) the files of disability retirees who are due a re-examination report.

Contact: Don Cadenhead, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400. For ADA assistance, contact Mary Godzik (512) 397-6400 or TDD (512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Filed: August 28, 1996, 3:26 p.m.

TRD-9612580

◆ ◆ ◆  
**Regional Meetings**

**Meetings Filed August 28, 1996**

Brazos Valley Developmental Council, Brazos Valley Regional Advisory Committee on Aging met at 1706 East 29th Street, Bryan, September 3, 1996 at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD 9612583.

**Meetings Filed August 29, 1996**

Austin-Travis County MHMR Center Executive Committee met at 1430 Collier Street, Executive Director's Conference Room, Austin, August 29, 1996 at 4:00 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD 9612637.

Bell-Milam-Falls Water Supply Corporation met at Corporation Office, FM 485 West, Cameron, September 5, 1996 at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD 9612588.

Central Plains Center for MHMR & SA, Board of Trustees, met in Emergency Meeting, at 208 South Columbia, Plainview, August 29, 1996 at 6:00 p.m. Information may be obtained from Ron Trusler, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636. TRD 9612634.

East Texas Council of Governments, CEO Board of Directors, met at 1306 Houston Street, Kilgore, September 4, 1996 at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (803) 984-8641. TRD 9612671.

Edwards Aquifer Authority Finance Committee met at 1615 North St. Marys Street, San Antonio, September 3, 1996 at 4:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD 9612647.

Edwards Aquifer Authority Ad-Hoc Legislative Committee met at 1615 North St. Marys Street, San Antonio, September 4, 1996 at 3:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD 9612650.

Edwards Aquifer Authority Litigation Oversight Committee met at 1615 North St. Marys Street, San Antonio, September 4, 1996 at 4:30 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD 9612649.

50th Judicial District, Juvenile Board, met at District Courtroom, Cottle County Courthouse, Paducah, September 5, 1996 at 11:30 a.m.

Information may be obtained from David W. Hajek, P.O. Box 508, Seymour, Texas 76380, (817) 888-2852. TRD 9612590.

Lamar County Appraisal District Board of Directors met in emergency meeting at 521 Bonham, Paris, on August 29, 1996 at 3:00 p.m. Information may be obtained from Joe A. Welch, P.O. Box 400, Paris, Texas 75460, (903) 785-7822. TRD 9612638.

Permian Basin Regional Planning Commission will meet at 2910 La Force Boulevard, Midland, September 11, 1996 at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD 9612663.

Texas Rural Communities, Inc. Board of Directors met at 1016 La Posada Drive, Suite 280, Austin, September 4, 1996 at 6:00 p.m. Information may be obtained from Leslie Janca, 1016 La Posada Drive, Suite 200, Austin, Texas 78752, (512) 458-1016. TRD 9612664.

Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, September 10, 1996 at 10:00 a.m. Information may be obtained from Tyler Cad, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD 9612648.

West Central Texas Council of Governments, Career Stop Advisory Committee, met at 1025 E. N. 10th Street, Abilene, September

4, 1996 at 10:00 a.m. Information may be obtained from Cheryl Halliburton, 809 North Judge Ely Boulevard, Abilene, Texas 79601, (915) 672-5633. TRD 9612589.

#### Meetings Filed August 30, 1996

Creedmoor Maha Water Corporation met at 1699 Laws Road, Mustang Ridge, September 4, 1996 at 7:30 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-2113. TRD 9612693.

Lavaca County Central Appraisal District, Review Board, will meet at 113 North Main Street, Hallettsville, September 13, 1996 at 9:00 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD 9612688.

Palo Pinto Appraisal District, Board of Directors, will meet at the Court House, Highway 180, Palo Pinto, September 11, 1996 at 1:30 p.m. Information may be obtained from Carol Holmes, P.O. Box 250, Palo Pinto, Texas 76484-0250, (817) 659-1281. TRD 9612700.

Palo Pinto Appraisal District, Board of Directors, will meet at the Court House, Highway 180, Palo Pinto, September 12, 1996 at 3:00 p.m. Information may be obtained from Carol Holmes, P.O. Box 250, Palo Pinto, Texas 76484-0250, (817) 659-1281. TRD 9612701.

# IN ADDITION

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The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

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## Texas Department of Health

### Fiscal Year 1997 Women, Infants, and Children (WIC) State Plan of Operations

The Texas Department of Health (department) Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is required by federal regulations to submit an annual update to the WIC State Plan of Operations for fiscal year 1997 to the United States Department of Agriculture for approval. The plan covers the outline of the department's goals and objectives for improving program operations, the affirmative action plan, local agency identification and an operational summary. The WIC Program is soliciting written comments on the proposed fiscal year 1997 program plan. A copy of the proposed plan is filed in the department's WIC program, Bureau of Nutrition Services, Texas Department of Health, Room M-260, 1100 West 49th Street, Austin, Texas 78756, and is available for public inspection between 8:00 a.m. to 5:00 p.m. The deadline for submission of written comments is Tuesday, October 1, 1996.

Issued in Austin, Texas, on August 30, 1996.

TRD-9612703

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: August 30, 1996



### Notification of Defunding Priority Three Medications

According to the policy of the Texas HIV Medication Program (program), the following notice is being published. Effective September 1, 1996, no additional clients will be added to the drugs classified as Priority 3: atovaquone (Mepron), amphotericin-B, ethambutol (myambutol), rifabutin (Mycobutin), and interferon-alpha (Roferon-A). The program will then discontinue the provision of these drugs to all clients on November 15, 1996. Comments should be addressed to the attention of MSJA, Sheral Skinner, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Issued in Austin, Texas, on August 30, 1996.

TRD-9612702

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: August 30, 1996



## Texas Health and Human Services Commission

### Excluded Medicaid Providers

In compliance with the Medicare and Medicaid Patient Protection Act of 1987, the following list provided by the Texas Health and Human Services Commission (HHSC) which identifies providers or employees of providers who are excluded from state and federal health care programs since publication of the May 1996 Medicaid Bulletin.

Providers excluded from the Medicaid and Title XX programs must not order or prescribe services to clients after the date of exclusion. Services rendered under the medical direction or under the prescribing orders of an excluded provider will also be denied. Providers who submit cost reports cannot include the salaries/wages/benefits of employees who have been excluded from Medicaid. Additionally, excluded employees are not permitted to provide Medicaid services to any patient/client.

\*Name

\*License/Provider Number

\*City

\*Effective Date

\*Period of Exclusion

### DOCTORS:

Agbebiyi, Jonatha A., MD, Corpus Christi, TX, April 23, 1996- INDEFINITE.

Burlton, Rogers C., MD; D4055; Rockville, MD, May 15, 1996- INDEFINITE.

Carpenter, Charles, MD, F2585, McAllen, TX, May 15, 1996-INDEFINITE.

Cartwright, Gregory B., MD, H7544, Silsbee, TX, May 29, 1996-INDEFINITE.

Doyle, Peter, MD, H6175, Houston, TX, June 1, 1996-INDEFINITE.

Ilahi, Mohammad A., MD, D8885, Baytown, TX, May 5, 15, 1996-INDEFINITE.

Martin, David A., DC, 4483, Floydada, TX, April, 23, 1996-INDEFINITE.

Nevins, Richard, OD, 3372T, El Paso, TX, July 25, 1996-5 years.

Smith, Cecil P., DC, 4518, Garland, TX, April 23, 1996-INDEFINITE.

Woods, Thomas A., MD, D0354, Winslow, ME, May 5, 1996-INDEFINITE.

#### **DENTISTS:**

Kindla, Anthony F., DDS, 16278, Pasadena, TX, July 22, 1996-2 years.

Klemcke, Rubey E., RDH, 6709, Corpus Christi, TX, May 17, 1996-2 years.

Ramey, Thomas M., DDS, 13938, Dallas, TX, May 23, 1996-INDEFINITE.

#### **NURSES:**

Armstrong, Nancy L., CNA, NA00109173, Ferris, TX, January 5, 1996-INDEFINITE.

Brooks, Kim L., CNA, NA00475528, Fort Worth, TX, January 28, 1996-INDEFINITE.

Broussard, Debra A., CNA, NA00049292, Port Arthur, TX, January 27, 1996-INDEFINITE.

Brown, Joseph E., CNA, NA00238486, Granbury, TX, February 20, 1996-INDEFINITE.

Cantu, Trinidad, CNA, NA10000396, Corpus Christi, TX, January 8, 1996-INDEFINITE.

Chambers, Linda G., LVN, 047071, Fort Worth, TX, July 13, 1996-INDEFINITE.

Dickey, Elisa V., CNA, NA10012879, Longview, TX, January 5, 1996-INDEFINITE.

Emeary, Adrea D., CNA, NA00429512, Sherman, TX, March 20, 1996-INDEFINITE.

Ford, Brenda F., CNA, NA00061658, College Station, TX, January 2, 1996-INDEFINITE.

Garcia, Mary H., CNA, NA00037977, Beeville, TX, January 8, 1996-INDEFINITE.

Garza, David, LVN, 130136, Houston, TX, April 23, 1996-INDEFINITE.

Gonzales, Alfred J., LVN, 141053, El Paso, TX, April 23, 1996-INDEFINITE.

Hagerman, Sandra, LVN, 145135, Vernon, TX June 28, 1996-5 years.

Hart, Billie F., CNA, NA00071853, Waco, TX, February 16, 1996-INDEFINITE.

Helton, George, CNA, NA10006559, Houston, TX, February 8, 1996-INDEFINITE.

Hodge, Marylan E., CNA, NA00110804, Tyler, TX, January 5, 1996-INDEFINITE.

Hoopes, Carolyn J., LVN, 038330, Marshall, TX, April 23, 1996-INDEFINITE.

Hopkins, Sherry L., RN, 5476500, League City, TX, April 1, 1996-INDEFINITE.

Hubert, Rhonda J., CNA, NA00207544, Dallas, TX, February 29, 1996-INDEFINITE.

Ison, Bridgette, CNA, NA00067001, Bacliff, TX, January 12, 1996-INDEFINITE.

Jasso, Moises, CNA, NA00491152, Los Fresnos, TX, February 16, 1996-INDEFINITE.

Julien, Beverly A., CNA, NA10006137, Galveston, TX, February, 8, 1996-INDEFINITE.

Landreneau, James B., RN, 599002, Shreveport, LA, March 28, 1996-INDEFINITE.

Laury, Amanda L., CNA, NA00033736, Rosebud, TX, January 25, 1996-INDEFINITE.

Lewis, Sandra L., CNA, NA00241033, Dallas, TX, February 21, 1996-INDEFINITE.

Love, Jacqueline L., LVN, 115075, Corpus Christi, TX, April 23, 1996-INDEFINITE.

Marchand, Jacqueline B., LVN, 109434, San Antonio, TX, April 23, 1996-INDEFINITE.

Mauro, Mary L., RN, 538259, Rio Rancho, NM, March 26, 1996-INDEFINITE.

Mejia, Delmy, CNA, NA00334032, Houston, TX, January 10, 1996-INDEFINITE.

Morris, Annette A., LVN, 083822, Houston, TX, April 23, 1996-INDEFINITE.

Murphy, Pamela, CNA, NA00482070, Texarkana, TX, February 16, 1996-INDEFINITE.

Murray, Carol A., LVN, 120994, Dallas, TX, April 23, 1996-INDEFINITE.

Newsome, Florence M., CNA, NA00050738, Kaufman, TX, January 28, 1996-INDEFINITE.

Parker, Purnices, CNA, NA00342432, Duncanville, TX, February 29, 1996-INDEFINITE.

Parsons, Lydia K., LVN, 079461, Odem, TX, April 23, 1996-INDEFINITE.

Perez, Maria V., CNA, NA00336530, San Antonio, TX, March 12, 1996-INDEFINITE.

Sampson, Geraldine O., CNA, NA00051917, Naples, TX, June 23, 1996-6 years.

Savage, Mildred F., CNA, NA00059045, Commerce, TX, February 29, 1996-INDEFINITE.

Schuler, Sandra K., RN, 517246, Fairbanks, AK, April 8, 1996-INDEFINITE.

Shird, Shirley K., LVN, 105337, Woodville, TX, April 23, 1996-INDEFINITE.

Sides, Sandra K., RN, 544106, Pasadena, TX March 13, 1996-INDEFINITE.

Smith, Daisy M., CNA, NA00376835, Corsicana, TX, March 20, 1996-INDEFINITE.

Terry, Carla B., CNA, NA00436187, Mt. Pleasant, TX, February 29, 1996-INDEFINITE.

Vela, Maria L., CNA, NA00107709, La Mesa, TX, February 13, 1996-INDEFINITE.

Wacker, August T., RN, 604828, Las Cruces, NM, March 27, 1996-INDEFINITE.

Warner, William O., CNA, NA00435212, Big Spring, TX, February 27, 1996-INDEFINITE.

Weigelt, Sharyn A., LVN, 232376, Fresno, TX, July 11, 1996-6 years.

Wells, Theresa A., CNA, NA00153927, Kilgore, TX, January 20, 1996-INDEFINITE.

West, Barry R., RN, 514001, Fayetteville, AR, April 4, 1996-INDEFINITE.

Whitmire, Authur R., CNA, NA00356877, Refugio, TX, January 12, 1996-INDEFINITE.

Whitt, Jackie C., RN, 235295, Albuquerque, NM, March 3, 1996-INDEFINITE.

Wilson, Paul D., CNA, NA00115773, Jacksonville, TX, January 20, 1996-INDEFINITE.

Wyble, Timothy J., LVN, 136007, Canyon, TX, April 23, 1996-INDEFINITE.

#### **PHARMACISTS:**

Beverly, Edwards G., RPH, 12471, McKinney, TX, February 6, 1996-5 years.

Beverly, Stephen R., RPH, 25177, Melissa, TX, February 6, 1996-5 years.

Craven, Frank E., RPH, 28451, Huntsville, TX, June 7, 1996-INDEFINITE.

Dunlap, Cynthia A., RPH, 30833, Fort Worth, TX, May 8, 1996-INDEFINITE.

Green, Donald D., RPH, 14907, Johnson City, TX, June 7, 1996-INDEFINITE.

Guidry, Danny J., RPH, 22704, Lake Charles, LA, March 7, 1996-INDEFINITE.

Hale, Russell W., RPH, 27203, Kirbyville, TX, January 11, 1996-INDEFINITE.

Long, Steve R., RPH, 29398, Bella Vista, AR, May 8, 1996-INDEFINITE.

Mahoney, Michael F., RPH, 19302, Melissa, TX, January 31, 1995-INDEFINITE.

Malone, Jr., Francis R., RPH, 23802, Garland, TX, January 24, 1996-INDEFINITE.

Shelburne, Eugene H., RPH, 23363 Hockley, TX, May 8, 1996-INDEFINITE.

Valdes, Eugene H., RPH, 11268, Weslaco, TX, June 7, 1996-INDEFINITE.

#### **PHARMACIES:**

Smith Drug Company, 1379 McKinney, TX, February 6, 1996-5 years.

Wysong Professional Pharmacy, 11678 McKinney, TX, February 6, 1996-5 years.

#### **INDIVIDUALS:**

Brown, Rhonda Bryan, TX, June 3, 1996-15 years.

Chamely, Anna, CCP002864, Bedford, TX, June 6, 1996-5 years.

Colliau, Penny L., Kaufman, TX, June 9, 1996-5 years.

Daniels, Gary V., Texarkana, TX, June 3, 1996-20 years.

Daniels, Sheila J., Houston, TX, April 30, 1996-5 years.

Daniels, Monica B., Bryan, TX, June 4, 1996-15 years.

Fife, Betty, Brenham, TX, June 28, 1996-5 years.

Harr, Robert L., 50366, Fort Worth, TX, August 10, 1995-6 years.

King, Patsy, Bryan, TX, June 4, 1996-10 years.

Ramirez, Jesus R., DPM, 852, El Paso, TX April 23, 1996-INDEFINITE.

Renfro, George A., Plano, TX, June 4, 1996-5 years.

Support Products, Inc., Houston, TX, June 4, 1996-10 years.

Switzenburg, Joe, PT, 1071322, Amarillo, TX, December 1, 1995-30 days.

Wilson, Jr., William R., El Paso, TX, June 4, 1996-5 years.

#### **TRANSPORTATION:**

D&B Medical Transport, Texarkana, TX, June 4, 1996-20 years.

Issued in Austin, Texas, on August 29, 1996.

TRD-9612636

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: August 29, 1996



### **Texas Department of Housing and Community Affairs/Manufactured Housing Division**

#### **Notice of Administrative Hearing**

Manufactured Housing Division, Tuesday, September 10, 1996, 9:00 a.m., continued from a prior hearing date of July 25, 1996, State

Office of Administrative Hearing, 300 West 15th Street, Suite 502, Austin, Texas.

#### AGENDA:

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Mack McGough doing business as McGough's Mobile Home Service to hear alleged violations of the Texas Manufactured Housing Standards Act, Texas Revised Statutes Annotated, Article 5221f, §7(b) and §17(b) (Vernon 1995) ("the Act"), by selling two manufactured homes within a twelve month period; violation of the Act, §8(d), by not properly transferring a title on two homes within thirty days after the date of ownership was effective; violation of the Act, §8(b), by selling a home that was not habitable for residence and failed to provide 60 day habitability notice; violation of the Act, §6(f), by making fifteen announcements concerning the sale, exchange, or lease-purchase of manufactured homes to a consumer in the State of Texas through advertisement. SOAH 332-96-1093. Department MHD1996000166C.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on August 30, 1996.

TRD-9612694

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs/Manufactured Housing Division

Filed: August 30, 1996



#### Notice of Public Hearing

Texas Department of Housing and Community Affairs Single Family Mortgage Revenue and Revenue Refunding Bonds 1996 Series D and E

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at 507 Sabine Street, Room 434, Austin, Texas, at 10:00 a.m. on Friday, September 20, 1996, with respect to an issue of single family mortgage revenue bonds (the "Bonds") to be issued in one or more series in an aggregate face amount of not more than \$175,000,000 by the Department. A portion of the proceeds of the Bonds will be used to finance an estimated 1500 single family residential mortgage loans made to eligible very low, low and moderate income first-time home buyers for the purchase of homes located within the State of Texas. Approximately \$14,685,000 of the funds are being made available as a result of the refunding of the Department's Single-Family Mortgage Revenue Refunding Tax-Exempt Commercial Paper Notes, Series B. A portion of the proceeds of the Bonds will be used to pay the redemption price of all of the Texas Housing Agency's (predecessor in function to the Department) Single Family Mortgage Revenue Bonds 1985 Series C and 1986 Series B. For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families whose family income does not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income. The Department anticipates setting aside approximately 40% of the funds made

available for borrowers of low and very low income for approximately one year. In addition, substantially all of the borrowers under the programs will be required to be persons who have not owned a principal residence during the preceding three years. Further, residences financed with loans under the programs will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to applicable federal law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department's mortgage loan finance program and the issuance of the Bonds. Questions or requests for additional information may be directed to Tammy Novak at the Texas Department of Housing and Community Affairs, 507 Sabine Street, 8th Floor, Austin, Texas 78701; (512) 475-4573.

Persons who intend to appear at the hearing and express their views are invited to contact Tammy Novak in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Tammy Novak prior to the date scheduled for the hearing.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of §147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exemption from federal income taxation of the interest on the Bonds.

Individuals who require auxiliary aids for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822, or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Issued in Austin, Texas, on August 30, 1996.

TRD-9612706

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: August 30, 1996



Texas Department of Housing and Community Affairs Single Family Colonias Mortgage Revenue Bonds Junior Lien Series 1996 A

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at 507 Sabine Street, Room 434, Austin, Texas, at 10:00 a.m. on Friday, September 20, 1996, with respect to an issue of single family mortgage revenue bonds (the "Bonds") to be issued in an aggregate face amount of not more than \$20,000,000 by the Department, the proceeds of which will be used to finance an estimated 2000 FHA Title I Home Improvement Loans or other eligible single family residential mortgage loans made to families that earn 60 percent or less of the median family income for the rehabilitation, reconstruction or purchase of homes located within a colonia (as defined by Section 916 of Public Law Number 101-625) in the State of Texas. The limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to applicable federal law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department's mortgage loan

finance program and the issuance of the Bonds. Questions or requests for additional information may be directed to Tammy Novak at the Texas Department of Housing and Community Affairs, 507 Sabine Street, 8th Floor, Austin, Texas 78701; (512) 475-4573.

Persons who intend to appear at the hearing and express their views are invited to contact Tammy Novak in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Tammy Novak prior to the date scheduled for the hearing.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of §147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exemption from federal income taxation of the interest on the Bonds.

Individuals who require auxiliary aids for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822, or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Issued in Austin, Texas, on August 30, 1996.

TRD-9612705

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: August 30, 1996



#### Notice of Public Hearing

Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (NHP Foundation-Asmara Project) Series 1996

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs in Room 434, located at 507 Sabine, Austin, Texas, at 10:00 a.m. on Friday, September 20, 1996 with respect to an issue of multi-family residential rental project revenue bonds (the "Bonds") to be issued in one or more series in the aggregate principal amount not to exceed \$28,500,000, by the Texas Department of Housing and Community Affairs (the "Issuer") and the proceeds of which will be loaned to Asmara Affordable Housing, Inc., a Texas nonprofit corporation (the "Corporation"), to finance the acquisition and rehabilitation of nine multi-family housing projects (collectively, the "Project") described as follows: Arbour East, 1615 John West Road, Dallas, Texas 75228 (300 units); Azalea Court, 1721 John West Road, Dallas, Texas 75228 (57 units); Players Club, 2525 Players Court, Dallas, Texas 75287 (320 units); Wellington Place, 9940 Forest Lane, Dallas, Texas 75243 (164 units); Heritage Square Apartments, 4753 Duncanville Road, Dallas, Texas 75236 (112 units); Highlands Apartments, 2359 Highland Road, Dallas, Texas 75228 (136 units); Creek Hollow Apartments, 6218 Finbro Drive, Fort Worth, Texas 76133 (120 units); Stone Ridge Apartments, 600 East Arkansas, Arlington, Texas 76014 (204 units) and Oak Brook Apartments, 5353 DeSoto Drive, Houston, Texas 77091 (222 units). The Project will be owned by the Corporation and will be operated by the NHP Foundation and managed by NHP Texas Management Company.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of

the Bonds. Questions or requests for additional information may be directed to Tammy Novak at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-4573.

Persons who intend to appear at the hearing and express their views are invited to contact Tammy Novak in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Tammy Novak prior to the date scheduled for the hearing.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of §147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exclusion from gross income of the owners thereof of the interest on the Bonds, other than the taxable bonds, for federal income tax purposes.

Individuals who require auxiliary aids in order to attend this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822, or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Issued in Austin, Texas, on August 30, 1996.

TRD-9612695

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: August 30, 1996



#### Request for Proposal for Technical Advisors

The Texas Department of Housing and Community Affairs ("TDHCA") is seeking proposals for technical advisors to assist TDHCA in the implementation of a quality control plan for the originating, selling and servicing of single family and multifamily mortgages.

To receive serious consideration, the proposals must:

1. include details and "per file" cost estimated to review the origination and servicing of loans secured by both single family and multifamily properties. (Each component should be priced separately, such that individual estimates are provided for origination of single family loans, origination of multifamily loans, servicing of single family loans and servicing of multifamily loans. (All single family loans will have a fixed rate of interest);
2. describe specific qualifications to support the ability to perform such reviews;
3. be from individuals or companies who are knowledgeable for Fannie Mae, FHA, GNMA and regulatory guidelines (resumes must be provided of the key individuals who will be performing the reviews that demonstrate these qualifications);
4. include a reference list of institution names, contacts and telephone numbers of current and/or recent customers;
5. include a recommendation as to the scope and of the quality control review, as well as the mechanism for reporting results to TDHCA.

Proposals must be received by TDHCA no later than 5:00 p.m., September 23, 1996.

Furthermore, TDHCA reserves the right to accept or reject any or all proposals submitted. TDHCA is under no obligation to execute a contract on the basis of the RFP. TDHCA intends to use responses as a basis for further negotiation of specific details with potential contractors.

To obtain additional information regarding this notice, please contact:

Liz Brannen, Single Family Loan Operations Manager Texas Department of Housing and Community Affairs P. O. Box 13941, 507 Sabine, Suite 800 Austin, Texas 78711-3941 512-475-2338

Issued in Austin, Texas, on August 30, 1996.

TRD-9612696

Larry Paul Manley

President

Texas Department of Housing and Community Affairs

Filed: August 30, 1996

## **Texas State Affordable Housing Corporation**

### **Request for Proposal for Technical Advisors**

The Texas State Affordable Housing Corporation is seeking proposals for technical advisors to assist Texas State Affordable Housing Corporation in the implementation of a quality control plan for the originating, selling and servicing of single family and multifamily mortgages.

To receive serious consideration, the proposals must:

1. include details and "per file" cost estimated to review the origination and servicing of loans secured by both single family and multifamily properties. (Each component should be priced separately, such that individual estimates are provided for origination of single family loans, origination of multifamily loans, servicing of single family loans and servicing of multifamily loans. (All single family loans will have a fixed rate of interest);
2. describe specific qualifications to support the ability to perform such reviews;
3. be from individuals or companies who are knowledgeable for Fannie Mae, FHA, GNMA and regulatory guidelines (resumes must be provided of the key individuals who will be performing the reviews that demonstrate these qualifications);
4. include a reference list of institution names, contacts and telephone numbers of current and/or recent customers;
5. include a recommendation as to the scope and of the quality control review, as well as the mechanism for reporting results to Texas State Affordable Housing Corporation.

Proposals must be received by Texas State Affordable Housing Corporation no later than 5:00 p.m., September 23, 1996.

Furthermore, Texas State Affordable Housing Corporation reserves the right to accept or reject any or all proposals submitted. Texas State Affordable Housing Corporation is under no obligation to execute a contract on the basis of the RFP. Texas State Affordable Housing Corporation intends to use responses as a basis for further negotiation of specific details with potential contractors.

To obtain additional information regarding this notice, please contact:

Rusty Emory, Vice President Texas State Affordable Housing Corporation P. O. Box 13941, 507 Sabine, Suite 800 Austin, Texas 78711-3941 512-475-3848

Issued in Austin, Texas, on August 30, 1996.

TRD-9612697

Larry Paul Manley

President

Texas State Affordable Housing Corporation

Filed: August 30, 1996

## **Texas Natural Resource Conservation Commission**

### **Notice of Public Hearing (Chapter 101)**

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to Chapter 101.

The commission proposes the repeal of §101.25, concerning Fees for Registration of Nonpermitted Facilities. The proposed repeal would eliminate the unnecessary requirement for the registration of facilities that were constructed before the former Texas Air Control Board implemented its permitting program. The deadline for the registration of such facilities was February 28, 1986. The Texas Clean Air Act requirement for this registration was repealed in 1991. There is no longer any need for the commission to require the registration of these "grandfathered" facilities.

A public hearing on the proposal will be held October 8, 1996, at 10:00 a.m. in Room 2210 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96153-101-AI. Comments must be received by 5:00 p.m., October 10, 1996. For further information, please contact Steve Ortiz, Air Policy and Regulations Division, (512) 239-2008.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on August 30, 1996.

TRD-9612692

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: August 30, 1996



### Public Hearing Notice

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 113 and to the SIP.

The commission proposes the repeal of §§113.1-113.3 and 113.7-113.13 concerning Inorganic Fluoride Compounds, and new §113.21, concerning Beryllium. The proposed amendments will improve compliance by controlling inorganic fluoride air emissions by individual New Source Review permit instead of by rule. The usual permit reviews for fluoride compounds shall be conducted using appropriate state and federal guidelines.

A public hearing on this proposal will be held in Austin on October 10, 1996 at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Circle, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96101-113-AI. Comments must be received by 5:00 p.m., October 10, 1996. For further information, please contact Sam Wells, Air Policy and Regulations Division, (512) 239-1441.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on August 29, 1996.

TRD-9612639  
Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission  
Filed: August 29, 1996



### Public Hearing Notice

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission will conduct a public hearing

to receive testimony regarding a site-specific revision to the SIP for the Dallas/Fort Worth ozone nonattainment area.

The proposed revision would authorize the Texas Instruments Lemon Avenue facility to use an alternate reasonably available control technology as allowed in 30 TAC §115.427, concerning Exemptions, in lieu of the control technology requirements specified in 30 TAC §115.421, concerning Surface Coating Processes.

A public hearing on this proposal will be held in Austin on October 10, 1996 at 2:00 p.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Circle, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96130-SIP-AI. Comments must be received by 5:00 p.m., October 10, 1996. For further information, please contact Sam Wells, Air Policy and Regulations Division, (512) 239-1441.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on August 29, 1996.

TRD-9612640  
Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission  
Filed: August 29, 1996



### Public Utility Commission of Texas

Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Lubbock County in Lubbock, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Lubbock County in Lubbock, Texas. Pursuant to Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16352.

The Application. Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-Custom service for Lubbock County. The geographic service market for this specific service is the Lubbock, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility

Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on August 29, 1996.

TRD-9612674

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: August 29, 1996

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Texas Tech RAHC in Lubbock, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Texas Tech RAHC in Lubbock, Texas. Pursuant to Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16353.

The Application. Southwestern Bell Telephone Company is requesting approval for a 170 station addition to the existing PLEXAR-Custom service for Texas Tech RAHC. The geographic service market for this specific service is the Lubbock, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on August 29 1996.

TRD-9612675

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: August 29, 1996

## Public Notice

On August 26, 1996, Southwestern Bell Telephone Company (SWB) filed notice of intent to file LRIC studies pursuant to Substantive Rule 23.91 for PLEXAR II Features in Project Numbers 12475 and 12481, Applications of Southwestern Bell Telephone Company and GTE Southwest, Inc. for Approval of LRIC Workplans Pursuant to Substantive Rule 23.91. SWB expects to file these studies on September 9, 1996.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by October 24, 1996. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0256. The telecommunications device for the deaf (TDD) is (512) 458-0221.

Issued in Austin, Texas, on August 28, 1996.

TRD-9612576

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: August 28, 1996

## Teacher Retirement System of Texas

### Request for Offer

The Teacher Retirement System of Texas (TRS) is requesting offers from qualified information systems vendors to serve as a general project manager for the following improvements to the TRS:

1. Strengthen capabilities of MIS to effectively support the TRS organization;
2. Select RDBMS and develop agency wide data architecture;
3. Design new member enrollment and district reporting process;
4. Design and build or purchase and implement new district reporting and contribution system;
5. Design and build or purchase and implement new member data system;
6. Design new benefit processing and disbursement process; and
7. Design and build or purchase and implement new benefit processing and disbursement system.

Parties interested in responding to the RFO should contact Marian Miller, 1000 Red River, Austin, Texas 78701-2698 (512) 397-6400 Ext. 6207 to obtain a copy of the RFO. The RFO will be available for pick up at 1000 Red River, Austin, Texas during normal business hours.

A response to the RFO must be received in the offices of TRS located at 1000 Red River, Austin, Texas 78701-2698 no later than 5:00 p.m. October 31, 1996. TRS shall be the sole and final arbiter of when offers are received.

Responses will be evaluated in a number of areas. This will include, but not be limited to, the following: understanding of the project; experience with projects for similar industries; resources and financial strength of firm; overall cost effectiveness; current technical and management expertise shown through industry alliances; long-term viability of recommended products; responses to references contacted; principles to be assigned to the project and QISV certification.

TRS will use the information collected through this RFO to establish strategies for the future. Inclusion of your firm in this information gathering process in no way implies that you will be selected for future actions. TRS is not responsible for any cost incurred prior to the execution of a contract. Finalists may be required to appear at TRS to orally present their proposals, at the finalist's expense. Firms should be prepared to provide such presentations with no more than five days notice.

Issued in Austin, Texas, on August 30, 1996.

TRD-9612698

Charles Dunlap

Executive Director

Teacher Retirement System of Texas



Filed: August 30, 1996

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### Request for Proposals

The Teacher Retirement System of Texas (TRS) is issuing a request for proposal (RFP) to engage outside fiduciary counsel to supplement legal advice it receives from its in-house counsel and from the Attorney General. Outside fiduciary counsel will provide specialized legal advice on matters involving the exercise of the fiduciary responsibilities of the board members and key staff members.

Persons who wish to submit a proposal may request a copy of the complete RFP by contacting William Baker, General Counsel, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6413.

Responses to the request for proposals must be received in the offices of TRS located at 1000 Red River, Austin, Texas 78701-2698 no later than 5:00 p.m., October 15, 1996.

TRS will make its selection of fiduciary counsel based upon a number of criteria, some of which include the demonstrated competence, experience, knowledge, qualifications, written and verbal communication skills, ability to comply with TRS requirements, and reasonableness of proposed fees, among others. It is anticipated that the TRS Board of Trustees will make the final selection of counsel from a list recommended by the TRS staff. The contract for services of the fiduciary counsel and all billings will be negotiated/reviewed with TRS staff and submitted to the Attorney General of Texas for approval.

By this Request for Proposal, TRS has not committed itself to employ fiduciary counsel at all or for any particular scope of services or term of agreement. TRS reserves the right to make those decisions after receipt of responses, and TRS' decision on these matters is final.

TRS reserves the right to negotiate all elements which comprise the proposal of the firms to ensure that the best possible consideration be afforded to all responding counsel. TRS reserves the right to reject any and all proposals and to resolicit if it so chooses.

Issued in Austin, Texas, on August 30, 1996.

TRD-9612699

Charles Dunlap

Executive Director

Teacher Retirement System of Texas

Filed: August 30, 1996

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### Texas Department of Transportation

#### Public Notice

Pursuant to Transportation Code, §21.108-21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation will conduct a public hearing to receive comments from interested parties concerning approval of the draft Aviation Facility Development Program.

The public hearing will be held at 9:00 a.m. on Tuesday, September 17, 1996, at 150 East Riverside, South Tower, 5th Floor Conference Room, Austin, Texas 78704. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483 at (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

For additional information please contact Suetta Murray, Division of Aviation, 150 East Riverside, Austin, Texas 78704, (512) 416-4504.

Issued in Austin, Texas, on August 30, 1996.

TRD-9612704

Robert E. Shaddock

General Counsel

Texas Department of Transportation

Filed: August 30, 1996

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## September - December 1996 Publication Schedule

The following is the September-December 1996 Publication Schedule for the *Texas Register*. Listed below are the deadline dates for these issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. No issues will be published on November 8, December 3, and December 31. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

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65 Tuesday, September 3	Monday, August 26	Wednesday, August 28	Wednesday, August 28
66 Friday, September 6	Wednesday, August 28	*Friday, August 30	*Friday, August 30
67 Tuesday, September 10	*Tuesday, September 3	Wednesday, September 4	Wednesday, September 4
68 Friday, September 13	Wednesday, September 4	Monday, September 9	Monday, September 9
69 Tuesday, September 17	Monday, September 9	Wednesday, September 11	Wednesday, September 11
70 Friday, September 20	Wednesday, September 11	Monday, September 16	Monday, September 16
71 Tuesday, September 24	Monday, September 16	Wednesday, September 18	Wednesday, September 18
72 Friday, September 27	Wednesday, September 18	Monday, September 23	Monday, September 23
73 Tuesday, October 1	Monday, September 23	Wednesday, September 25	Wednesday, September 25
74 Friday, October 4	Wednesday, September 25	Monday, September 30	Monday, September 30
Tuesday, October 8	<i>Third Quarterly Index</i>		
75 Friday, October 11	Wednesday, October 2	Monday, October 7	Monday, October 7
76 Tuesday, October 15	Monday, October 7	Wednesday, October 9	Wednesday, October 9
77 Friday, October 18	Wednesday, October 9	Monday, October 14	Monday, October 14
78 Tuesday, October 22	Monday, October 14	Wednesday, October 16	Wednesday, October 16
79 Friday, October 25	Wednesday, October 16	Monday, October 21	Monday, October 21

<b>FOR ISSUE PUBLISHED ON:</b>	<b>DEADLINES FOR RULES BY 10 A.M.</b>	<b>DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.</b>	<b>DEADLINES FOR OPEN MEETINGS BY 10 A.M.</b>
80 Tuesday, October 29	Monday, October 21	Wednesday, October 23	Wednesday, October 23
81 Friday, November 1	Wednesday, October 23	Monday, October 28	Monday, October 28
82 Tuesday, November 5	Monday, October 28	Wednesday, October 30	Wednesday, October 30
83 Friday, November 8	Wednesday, October 30	Monday, November 4	Monday, November 4
84 Tuesday, November 12	Monday, November 4	Wednesday, November 6	Wednesday, November 6
85 Friday, November 15	Wednesday, November 6	*Friday, November 8	*Friday, November 8
86 Tuesday, November 19	*Tuesday, November 12	Wednesday, November 13	Wednesday, November 13
87 Friday, November 22	Wednesday, November 13	Monday, November 18	Monday, November 18
88 Tuesday, November 26	Monday, November 18	Wednesday, November 20	Wednesday, November 20
89 Friday, November 29	Wednesday, November 20	Monday, November 25	Monday, November 25
Tuesday, December 3	<i>No Issue Published</i>		
90 Friday, December 6	Wednesday, November 27	Monday, December 2	Monday, December 2
91 Tuesday, December 10	Monday, December 2	Wednesday, December 4	Wednesday, December 4
92 Friday, December 13	Wednesday, December 4	Monday, December 9	Monday, December 9
93 Tuesday, December 17	Monday, December 9	Wednesday, December 11	Wednesday, December 11
94 Friday, December 20	Wednesday, December 11	Monday, December 16	Monday, December 16
95 Tuesday, December 24	Monday, December 16	Wednesday, December 18	Wednesday, December 18
96 Friday, December 27	Wednesday, December 18	Monday, December 23	Monday, December 23
Tuesday, December 31	<i>No Issue Published</i>		

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**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following a 30-day public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Open Meetings** - notices of open meetings.

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Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 21 (1996) is cited as follows: 21 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "21 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 21 TexReg 3."

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The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

To purchase printed volumes of the TAC or to inquire about WESTLAW access to the TAC call West: 1-800-328-9352.

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1. Administration
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7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

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1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 26, April 9, July 12, and October 8, 1996). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

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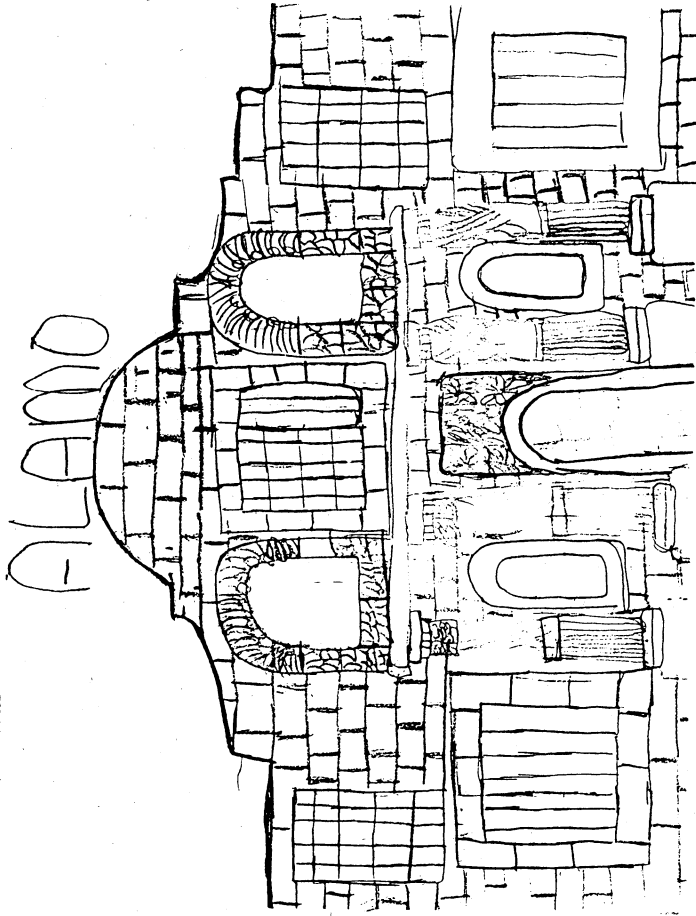
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40 TAC §3.704.....950, 1820

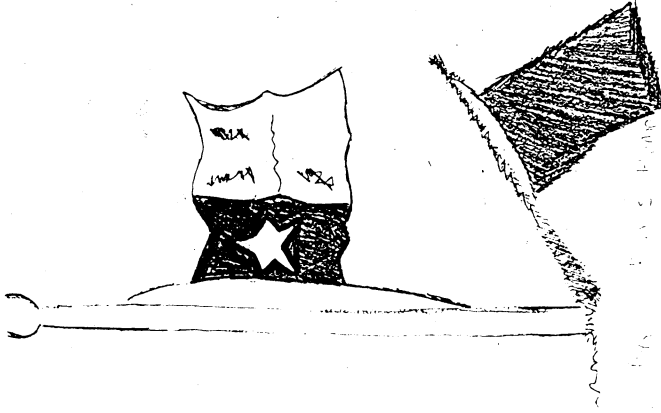
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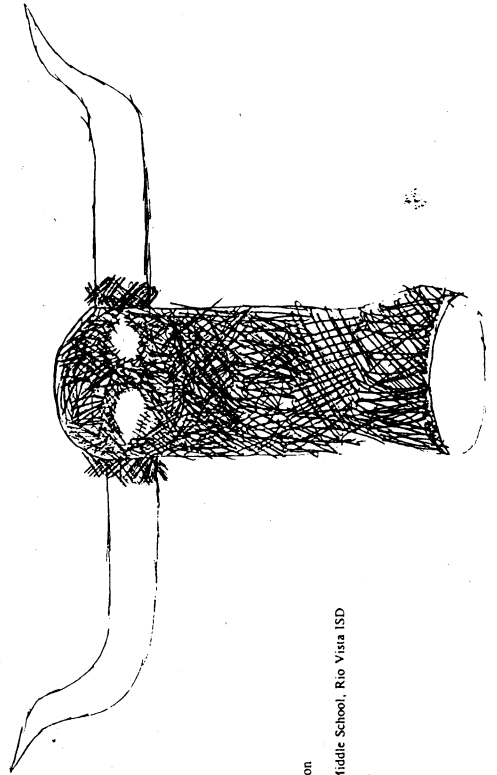
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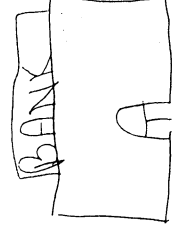
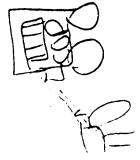
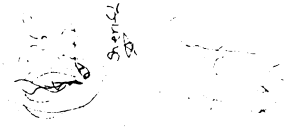
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